

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4           IN RE:   NATIONAL PRESCRIPTION        ) No. 17-md-2804  
5           OPIATE LITIGATION                    )  
6    )  
7           APPLIES TO ALL CASES                 ) Hon. Dan A. Polster  
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VIDEO DEPOSITION OF SANDRA KINSEY

11

June 7, 2019

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9:05 a.m.

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\*HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIAL REVIEW\*

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Reporter: John Arndt, CSR, CCR, RDR, CRR  
CSR No. 084-004605

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CCR No. 1186

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<p>1 DEPOSITION OF SANDRA KINSEY produced, 2 sworn, and examined on June 7, 2019, at Marcus &amp; 3 Shapira LLP, One Oxford Centre, 35th Floor, in the City 4 of Pittsburgh, State of Pennsylvania, before John 5 Arndt, a Certified Shorthand Reporter and Certified 6 Court Reporter.</p> <p>7 APPEARANCES OF COUNSEL</p> <p>8 On Behalf of Plaintiffs: 9 Levin, Papantonio, Thomas, Mitchell, Rafferty &amp; 10 Proctor, P.A. 11 316 South Baylen Street, Suite 600 12 Pensacola, FL 32502 13 (850) 435-7043 14 BY: MR. BRANDON L. BOGLE 15 bbogle@levinlaw.com</p> <p>16 On Behalf of HBC Services and the witness: 17 Marcus &amp; Shapira LLP 18 301 Grant Street 19 Pittsburgh, PA 15219 20 (412) 471-3490 21 BY: MR. ROBERT M. BARNES 22 rbarnes@marcus-shapira.com 23 MR. JOSHUA A. KOBRIN 24 kobrin@marcus-shapira.com</p> <p>On Behalf of Walmart: Jones Day 77 West Wacker Drive Chicago, IL 60601 (312) 269-4335 BY: MS. TARA A. FUMERTON tfumerton@jonesday.com</p> <p>On Behalf of Johnson &amp; Johnson and Janssen: O'Melveny &amp; Myers LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 BY: MR. DANIEL H. LEIGH dleigh@omm.com (present via videoconference)</p>	<p>1 APPEARANCES OF COUNSEL (CONTINUED)</p> <p>2</p> <p>3 Bailey &amp; Wyant, PLLC 4 500 Virginia Street East, Suite 600 5 Charleston, WV 25301 6 (304) 345-4222 7 BY: MR. MICHAEL W. TAYLOR 8 mtaylor@baileywyant.com 9 (present via videoconference)</p> <p>10 Also present: Jacob Arndt, videographer 11 Ian Eberle</p>
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<p>1 APPEARANCES OF COUNSEL (CONTINUED)</p> <p>2</p> <p>3 On Behalf of Purdue Pharma: 4 Dechert LLP 5 1095 Avenue of the Americas 6 New York, NY 10036 7 (212) 698-3599 8 BY: MS. SHARON TURRET 9 sharon.turret@dechert.com 10 (present via videoconference)</p> <p>11 On Behalf of AmerisourceBergen: 12 Reed Smith LLP 13 1301 K Street, Suite 1000 14 Washington, DC 20005 15 (202) 414-9286 16 BY: MS. LINDSAY A. DeFRANCESCO 17 ldefrancesco@reedsmith.com 18 (present via videoconference)</p> <p>19 On Behalf of Allergan Finance, LLC: 20 Kirkland &amp; Ellis LLP 21 300 North LaSalle 22 Chicago, IL 60654 23 (312) 862-2000 24 BY: MR. ZACHARY A. CIULLO zac.ciullo@kirkland.com (present via videoconference)</p> <p>On Behalf of Discount Drug Mart: Cavitch, Familo &amp; Durkin Co. LPA 1300 East 9th Street Cleveland, OH 44114 (216) 621-7860 BY: MR. ERIC J. WEISS (present via videoconference)</p> <p>On Behalf of Walgreens: Bartlit Beck LLP 54 West Hubbard Street Chicago, IL 60654 (312) 494-4410 BY: MR. BRIAN C. SWANSON brian.swanson@bartlitbeck.com (present via videoconference)</p>	<p>1 INDEX OF INTERROGATION</p> <p>2 Examination by Mr. Bogle Page 8 3 Examination by Mr. Barnes Page 205 4 Examination by Mr. Bogle Page 244 5 Examination by Mr. Barnes Page 255</p> <p>6 INDEX OF EXHIBITS</p> <p>7 Exhibit Kinsey-001 Page 12 8 (Expert report) 9 Exhibit Kinsey-002 Page 12 10 (Amended expert report)</p> <p>11 Exhibit Kinsey-003 Page 13 12 (Errata to expert report) 13 Exhibit Kinsey-004 Page 20 14 (Notice of deposition)</p> <p>15 Exhibit Kinsey-005 Page 21 16 (Additional documents reviewed) 17 Exhibit Kinsey-006 Page 23 18 (Invoices)</p> <p>19 (Exhibits are attached.)</p>

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: We are now on the          2 record. My name is Jacob Arndt. I'm a videographer          3 representing Golkow Litigation Services. Today's date          4 is June 7th, 2019, and the time is 9:05 AM.          5 This video deposition is being held in          6 Pittsburgh, Pennsylvania, in re National Prescription          7 Opiate Litigation for the United States District Court          8 for the Northern District of Ohio, Eastern Division.          9 The deponent is Sandra Kinsey.          10 Counsel, please identify yourselves.          11 MR. BOGLE: Brandon Bogle on behalf of the          12 plaintiffs.          13 MR. BARNES: Robert Barnes, Marcus &amp;          14 Shapira, for HBC Service Company and the witness,          15 Sandra Kinsey.          16 MR. KOBRIN: Joshua Kobrin of Marcus &amp;          17 Shapira. I'm also representing HBC Service Company and          18 the witness.          19 MS. FUMERTON: Tara Fumerton from Jones          20 Day representing Walmart.          21 MR. BARNES: Ian, you want to --          22 MR. EBERLE: Ian Eberle at Marcus &amp;          23 Shapira.          24 MR. BARNES: Ian is a first-year law</p>	<p style="text-align: right;">Page 8</p> <p>1          2 The witness, SANDRA KINSEY, first having been          3 duly sworn, testified as follows:          4 EXAMINATION          5 BY MR. BOGLE:          6 Q. Good morning.          7 A. Good morning.          8 Q. My name is Brandon Bogle. I'm going to be          9 asking you some questions today regarding your report          10 that you submitted in the opioid litigation. Can I get          11 your full name first, please?          12 A. Sandra Kinsey.          13 Q. And I understand you've had your          14 deposition taken before, but I just want to go through          15 an abbreviated sort of set of rules here, hopefully          16 make things go a little smoother today.          17 So I'm going to ask you questions. I'd          18 ask that before you start your answer you wait till I          19 finish my question, even if you think you might know          20 where I'm going with the question. That will make the          21 transcript a little clearer and help ensure that you're          22 answering the right question. Is that fair?          23 A. Sure.          24 Q. And I'll try to do the same for you. I</p>
<p style="text-align: right;">Page 7</p> <p>1 student.          2 MR. BOGLE: Hey, Ian. Nice to meet you,          3 man.          4 MR. BARNES: He wants to see how these          5 things happen, and if he sticks in law school after          6 this deposition, that will be a plus.          7 THE VIDEOGRAPHER: Anybody on the phone?          8 MR. BOGLE: You want the phone stuff?          9 THE REPORTER: Would you like to announce          10 your appearances on the record on the phone?          11 MR. LEIGH: Daniel Leigh from O'Melveny &amp;          12 Myers on behalf of Janssen defendants.          13 MS. TURRET: Sharon Turret from Dechert on          14 behalf of Purdue.          15 MS. DeFRANCESCO: Lindsay DeFrancesco from          16 Reed Smith on behalf of AmerisourceBergen Drug          17 Corporation.          18 MR. CIULLO: Zac Ciullo from Kirkland &amp;          19 Ellis on behalf of Allergan Finance LLC.          20 MR. WEISS: Eric Weiss from Cavitch,          21 Familo &amp; Durkin on behalf of defendant Discount Drug          22 Mart.          23 THE VIDEOGRAPHER: The court reporter is          24 John Arndt and will now swear in the witness.</p>	<p style="text-align: right;">Page 9</p> <p>1 will try not to ask any questions until you're done          2 with your answer. I'm sure I'll mess that up a few          3 times, but that's certainly my ambition.          4 The only other thing that I wanted to          5 mention, if you don't hear or understand a question          6 that I ask, feel free to ask me to repeat or rephrase.          7 Otherwise I'm going to assume that -- if you answer the          8 question that you understood it. Is that fair?          9 A. Yes.          10 Q. Where are you currently employed?          11 A. I work for Kinsey Partners.          12 Q. And do you own that business?          13 A. I do that business.          14 Q. And you opened that business in 2014; is          15 that right?          16 A. I did, and if I may, I also work for          17 Highlands Oncology. I do have an employment with them.          18 Q. What do you do with Highlands Oncology?          19 A. I'm a clinical pharmacist.          20 Q. Do you see patients?          21 A. I do.          22 Q. How many days a week do you work with          23 Highlands Oncology?          24 A. It's roughly one day a week. I strictly</p>

<p style="text-align: right;">Page 10</p> <p>1 do relief work.</p> <p>2 Q. When you say relief work, what does that</p> <p>3 mean?</p> <p>4 A. I help fill in when people have a day off,</p> <p>5 when they need assistance by another pharmacist to fill</p> <p>6 in a shift. So I roughly on average -- I've been</p> <p>7 working a little bit more lately because they've lost a</p> <p>8 pharmacist, but roughly it's about one day a week.</p> <p>9 Q. And when you work one day a week, are they</p> <p>10 usually full sort of eight-to-10-hour days, or are they</p> <p>11 half days, or what are they --</p> <p>12 A. They're full eight-to-10-hour days.</p> <p>13 Q. When did you start working for Highlands</p> <p>14 Oncology?</p> <p>15 A. March.</p> <p>16 Q. Of this year?</p> <p>17 A. Yes.</p> <p>18 Q. What made you decide to start working for</p> <p>19 them?</p> <p>20 A. Well, I've been working as a relief</p> <p>21 pharmacist for several years since I left Walmart, and</p> <p>22 Highlands needed a relief pharmacist. My other relief</p> <p>23 work, I bill through my company as a 1099, as a</p> <p>24 contractor, and Highlands preferred to hire me as an</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Any of the other of the three you've</p> <p>2 listed have any sort of specialty as far as patients</p> <p>3 they see?</p> <p>4 A. No, they're just general retail.</p> <p>5 Q. Okay. I'm going to hand you what I'm</p> <p>6 marking here as Kinsey Exhibit 1, which is the expert</p> <p>7 report that you served initially in this case.</p> <p>8 [Exhibit Kinsey-001 marked for</p> <p>9 identification.]</p> <p>10 Q. And as Exhibit 2, I'm going to mark your</p> <p>11 amended expert report. Here you go.</p> <p>12 [Exhibit Kinsey-002 marked for</p> <p>13 identification.]</p> <p>14 A. Thank you.</p> <p>15 Q. And the amended expert report that I</p> <p>16 handed you here was served this Monday. Does that</p> <p>17 sound accurate to you?</p> <p>18 A. Yes.</p> <p>19 Q. And what prompted you to do an amended</p> <p>20 report?</p> <p>21 A. Further review. After I submitted the</p> <p>22 report, I went back through and -- like you do with</p> <p>23 normal edits and continued to find things that I felt</p> <p>24 needed further clarification for the record. I found</p>
<p style="text-align: right;">Page 11</p> <p>1 employee instead.</p> <p>2 Q. Where is Highlands located?</p> <p>3 A. Rogers, Arkansas.</p> <p>4 Q. And sort of as the name implies, I</p> <p>5 understand they would treat predominantly cancer</p> <p>6 patients?</p> <p>7 A. Predominantly, yes.</p> <p>8 Q. Where have you done relief work for other</p> <p>9 than Highlands Oncology?</p> <p>10 A. I've worked for Talley Pharmacy in</p> <p>11 Centerton, Arkansas, Teasley Drug in Gravette,</p> <p>12 Arkansas, Smith Drug in Gentry, Arkansas, Jepson Drug</p> <p>13 in Siloam Springs. I do relief work. I know these</p> <p>14 independent pharmacists, and so when they need a day</p> <p>15 off, I'm happy to go help.</p> <p>16 Q. And for these four other pharmacies you've</p> <p>17 listed, have you seen patients in that context as well?</p> <p>18 A. Yes.</p> <p>19 Q. Are there any sort of specialties for any</p> <p>20 of those four pharmacies as far as patients they serve?</p> <p>21 A. Not really. Talley Pharmacy did have a</p> <p>22 compounding business, so I saw a lot of females for</p> <p>23 hormones, but they have since -- the owner has since</p> <p>24 sold that pharmacy to a small chain.</p>	<p style="text-align: right;">Page 13</p> <p>1 some typos, that kind of stuff.</p> <p>2 Q. I'm going to hand you now what I'm marking</p> <p>3 as Exhibit 3 to your deposition.</p> <p>4 [Exhibit Kinsey-003 marked for</p> <p>5 identification.]</p> <p>6 Q. And Exhibit 3 is entitled errata to May</p> <p>7 10, 2019, expert report of Sandy K.B. Kinsey, R.Ph,</p> <p>8 MBA. Do you see that?</p> <p>9 A. Yes. Sorry.</p> <p>10 Q. And what is the purpose of this errata?</p> <p>11 A. It was to document the changes between the</p> <p>12 initial report and the amended report.</p> <p>13 Q. So all of the changes on the amended</p> <p>14 report -- would those be captured on this errata?</p> <p>15 A. I believe they're all on here, yes.</p> <p>16 Q. Is there anything as you sit here today</p> <p>17 that you're aware of that -- as far as changes go from</p> <p>18 the initial report to the amended report that are not</p> <p>19 captured on this errata?</p> <p>20 A. No, I believe they're all in here.</p> <p>21 Q. So between the initial expert report and</p> <p>22 the amended report, which are Exhibits 1 and 2, do</p> <p>23 those reports include all the opinions you intend to</p> <p>24 offer in this case?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. They include the opinions that I have 2 concluded to date and that I felt were most applicable 3 to this particular case. 4 Q. So are there any additional opinions you 5 intend to offer that are not captured in those reports? 6 A. I mean, I'm not going to limit my 7 opinions, but the ones that I feel are most important 8 are included in my report. 9 Q. Well, I'm entitled to know what opinions 10 you're going to offer. That's one of the purposes of 11 the deposition today. So I'm trying to get a sense of 12 what that is and whether I can find those in the four 13 corners of those reports. 14 A. So for that purpose, then yes, these are 15 the opinions that I intend to offer up to today. 16 Q. Are you currently working on anything 17 related to this case that you intend to supplement your 18 reports with? 19 A. I don't believe so. Not at this time. 20 MR. BARNES: And for the record, we do 21 reserve -- as plaintiffs have done, we reserve the 22 right to supplement her report for information learned 23 after the dates of her report. 24 BY MR. BOGLE:</p>	<p style="text-align: right;">Page 16</p> <p>1 to be brought in to assist you in crunching these 2 numbers, as you say? 3 A. I did ask for some help, but Marcus &amp; 4 Shapira were the ones that actually brought them in as 5 consultants. 6 Q. Could you have done the data analysis in 7 this case without assistance from a third party? 8 A. No, probably not. Given the time, maybe, 9 but I would have preferred to rely on a consulting 10 group. 11 Q. Are you relying on the Analysis Group or 12 any work that they've done for any opinions you're 13 reaching here today? 14 A. When you say rely -- I mean, all of the 15 opinions are mine. The information that they provided 16 just substantiate my opinions. 17 Q. Are there any opinions you could not have 18 reached on your own without the assistance of Analysis 19 Group, Inc.? 20 A. No. 21 Q. So the references to Analysis Group, Inc., 22 were removed on Exhibits H and I. Did they assist you 23 in creating any other exhibits in your report? 24 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. I want to go on Exhibit 3 to the third 2 page. So for Exhibits H and I on this page, you 3 deleted references to those documents which had a stamp 4 that said Analysis Group, Inc.; correct? 5 A. Yes. 6 Q. Why did you remove those references? 7 A. Just formatting. 8 Q. Were those exhibits created by Analysis 9 Group, Inc.? 10 A. They were. Under my direction. 11 Q. Who did you work with at Analysis Group to 12 create those exhibits? 13 A. There were three people, and I apologize; 14 I only know their first names. David, David, and 15 Vandella (ph). 16 Q. Had you worked with these individuals 17 before working on this case? 18 A. I have not. 19 Q. How did you come to work with them here? 20 A. They are a consulting group that was hired 21 by Marcus &amp; Shapira to help crunch some of the data 22 involved in this case so that I could better draw my 23 opinions. 24 Q. Did you specifically ask for another group</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Which ones? 2 A. The majority of the charts associated with 3 anything that had to do with the data crunching and 4 looking at Dr. McCann's data and Giant Eagle data they 5 helped with. 6 Q. Can you give me a list of the exhibits 7 that they assisted you on? 8 A. Sure. It would be Exhibit D, E, F, G, H, 9 I, J, M, N, O, P, and Q. 10 Q. Do you have a background in statistics? 11 A. No. 12 Q. Do you hold yourself out as an expert in 13 statistics? 14 A. I'm not an expert in statistics, but I've 15 evaluated plenty of datasets. 16 Q. Have you ever testified as an expert on a 17 matter related to statistical analyses? 18 A. No. 19 Q. What specifically did you ask the 20 individuals at AGI to do to assist you here? What were 21 your directions to them? 22 A. You know, it was really around as I was 23 drawing my opinions and thinking about the data. I 24 mean, it was -- it's brought up in my report as I was</p>

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1 drawing my conclusions I wanted to look at the data to  
2 ensure that it substantiated the conclusions that I was  
3 coming to, and I wanted help with graphs and charts and  
4 illustrations.  
5 Q. Did you reach the conclusions outlined in  
6 your report before AGI was brought in to assist in  
7 running data?  
8 A. Some of them, yes.  
9 Q. Which ones had you not -- which opinions  
10 had you not concluded in your mind prior to AGI being  
11 consulted?  
12 A. Well, I mean, that's a broad question. I  
13 can give -- I certainly can give you an example. So  
14 one of the conclusions that I talk about in McCann's  
15 data is some of the duplicate transactions that he had  
16 in his dataset. I didn't see those based off of a  
17 broad scan of his report. That information was  
18 discovered as AGI began digging into his dataset.  
19 Q. Anything else that comes to mind as far as  
20 things that you had not reached a conclusion on or you  
21 had not noticed in reviewing the reports that AGI  
22 brought to your attention?  
23 A. There are such things as we go through the  
24 exhibits with dates and times in which he is flagging

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1 orders in which HBC was not distributing, so some of  
2 the errors in his data AGI discovered and pointed out  
3 to me.  
4 Q. The he -- you're referring to Dr. McCann?  
5 A. I'm sorry. Yes.  
6 Q. So if, for example, AGI created Exhibits H  
7 and I, why remove the reference to them in the actual  
8 documents?  
9 A. Personal preference.  
10 Q. Why was that your preference?  
11 A. Because I wanted them to look like all the  
12 other reports.  
13 Q. When you say all the other reports, what  
14 are you referring to?  
15 A. The other exhibits.  
16 Q. The other exhibits in your report?  
17 A. The other exhibits in my report didn't  
18 have their stamp on it, so I was just from a formatting  
19 perspective wanting it to look nice.  
20 MR. KOBRIN: This is Joshua Kobrin.  
21 Counsel also wanted to put the same confidential  
22 subject to protective order stamp on it. I think it  
23 might have been slightly different in the initial  
24 report. I think it only said confidential.

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1 BY MR. BOGLE:  
2 Q. Are there any corrections to your current  
3 amended report that was served on Monday that you'd  
4 like to make at this time?  
5 A. No.  
6 Q. All right. I'm going to hand you Exhibit  
7 4, which is your deposition notice.  
8 [Exhibit Kinsey-004 marked for  
9 identification.]  
10 MR. BARNES: Thanks.  
11 BY MR. BOGLE:  
12 Q. Have you seen this notice prior to today?  
13 A. I don't think so.  
14 Q. If we can go to the third page of the  
15 document, Exhibit A. You see there there are three  
16 things that we've requested be produced prior to or at  
17 the deposition. I want to kind of go through these  
18 with you.  
19 Number 1 says all documents or other  
20 materials you reviewed since the date of your report  
21 that you have not specifically identified in your  
22 report in preparation for your expected testimony. You  
23 see that?  
24 A. Yes.

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1 Q. And yesterday I did receive what I'm going  
2 to mark as Exhibit 5 to your deposition. There you go.  
3 [Exhibit Kinsey-005 marked for  
4 identification.]  
5 Q. If you see, Exhibit 5 is titled additional  
6 documents reviewed by Sandra Kinsey. Do you see that?  
7 A. Yes.  
8 Q. Was Exhibit 5 created in response to the  
9 Document Request Number 1 in Exhibit A of the  
10 deposition notice that I just reviewed with you?  
11 A. Yes.  
12 Q. And the documents listed in Exhibit 5 --  
13 when did you review these?  
14 A. This week.  
15 Q. What days this week?  
16 A. Tuesday and Wednesday.  
17 Q. For what purpose did you review these  
18 documents?  
19 A. Further education and preparation for this  
20 deposition.  
21 Q. Did you ask for these specific materials,  
22 or were they provided to you by counsel at their  
23 request?  
24 A. They were provided by counsel.



<p style="text-align: right;">Page 22</p> <p>1 Q. Do you intend to offer any new opinions 2 based on the documents listed in Exhibit 5?</p> <p>3 A. No.</p> <p>4 Q. How do these documents impact your 5 existing opinions?</p> <p>6 A. They don't. Other than to reinforce my 7 current opinions.</p> <p>8 Q. Which current opinions do they reinforce?</p> <p>9 A. Most of them.</p> <p>10 Q. Any specific opinions you could tell me?</p> <p>11 A. No.</p> <p>12 Q. Had you asked AGI to run any additional 13 calculations based on the second supplemental expert 14 report of Craig McCann?</p> <p>15 A. I think we did one, yes.</p> <p>16 Q. You did one based on the second 17 supplemental report?</p> <p>18 A. I'm confused. Ask your question again.</p> <p>19 Q. Yeah. So Exhibit 5 --</p> <p>20 A. Okay.</p> <p>21 Q. -- one of the documents you list --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- is the second supplemental expert 24 report of Craig McCann.</p>	<p style="text-align: right;">Page 24</p> <p>1 copy of your most current and accurate CV as of the 2 date of your deposition. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. I know you provided a CV in your initial 5 report and in your amended report. Is that CV current 6 and up-to-date and accurate?</p> <p>7 A. Yes.</p> <p>8 Q. What did you do to prepare for your 9 deposition today?</p> <p>10 MR. BARNES: Objection to the extent it 11 seeks to invade privileged communications. So you can 12 answer generally without getting into discussions with 13 counsel.</p> <p>14 A. Preparing for the deposition was rereading 15 my expert report, getting comfortable speaking with 16 counsel, the general things you do to get ready for a 17 deposition.</p> <p>18 BY MR. BOGLE:</p> <p>19 Q. How much time did you spend preparing for 20 your deposition?</p> <p>21 A. A couple of days.</p> <p>22 Q. How many hours?</p> <p>23 A. Roughly 20.</p> <p>24 Q. Over which days?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Oh.</p> <p>2 Q. And my question was did you ask AGI to run 3 any additional calculations based on anything contained 4 in that report?</p> <p>5 A. No, I did not. I'm sorry. I 6 misunderstood you.</p> <p>7 Q. That's all right. All right. Let's go 8 back to the deposition notice, Exhibit 4. The second 9 request there is for an itemization of hours spent and 10 compensation paid or to be paid for your work in this 11 matter and your staff's work in this matter, including 12 all invoices you have submitted to counsel.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm going to hand you what I'm marking 16 as Exhibit 6 to your deposition, which are a copy of 17 the invoices that I received yesterday.</p> <p>18 [Exhibit Kinsey-006 marked for 19 identification.]</p> <p>20 Q. Are the invoices I provided to you as 21 Exhibit 6 intended to be responsive to our Request 22 Number 2 here on the deposition notice?</p> <p>23 A. Yes.</p> <p>24 Q. Request Number 3 in Exhibit A asks for a</p>	<p style="text-align: right;">Page 25</p> <p>1 A. So let me change that. I did a little bit 2 of work last week, so roughly 30 hours, maybe, a day or 3 so last week, and then two days this week.</p> <p>4 Q. Did you meet with any attorneys for this 5 preparation?</p> <p>6 A. I did.</p> <p>7 Q. Which ones?</p> <p>8 A. Bob Barnes and Josh Kobrin.</p> <p>9 Q. Did you meet with any counsel --</p> <p>10 A. And Scott Livings -- that was Scott 11 Livingston; right? Yeah, Scott Livingston, I believe. 12 Sorry. You can ask him.</p> <p>13 MR. BARNES: He's a partner of mine.</p> <p>14 BY MR. BOGLE:</p> <p>15 Q. Okay. Anybody else that you met with for 16 these preparation sessions?</p> <p>17 A. Not attorneys, no.</p> <p>18 Q. Any non-attorneys that you met with during 19 these preparation sessions?</p> <p>20 A. I had conference calls with the folks at 21 AGI.</p> <p>22 Q. The same three folks you gave me earlier?</p> <p>23 A. Yes.</p> <p>24 Q. What did you discuss with the AGI folks?</p>

<p style="text-align: right;">Page 26</p> <p>1 MR. BARNES: Excuse me. I'm going to          2 object and instruct the witness not to answer to the          3 extent it has anything to do with the preparation of          4 any draft report.          5 A. We --          6 MR. BOGLE: But AGI is not an expert in          7 this case. They're not -- they haven't offered any          8 expert reports. It's like any other third party.          9 MR. BARNES: I'm talking about her expert          10 report.          11 MR. BOGLE: She's speaking to a third          12 party, not her counsel. I don't think this is          13 protected.          14 MR. BARNES: She's speaking to a          15 consulting expert who are data analysis experts. To          16 the extent she had any discussions about the          17 preparation of any draft report, it's not permissible.          18 BY MR. BOGLE:          19 Q. So the discussions for deposition          20 preparation were after your report was submitted;          21 correct?          22 A. Yes.          23 Q. So what did you discuss?          24 A. Well, we did some --</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Again, just questions about the depo --          2 about the report and certain things that potentially          3 you would ask.          4 Q. Did they question you on any of the          5 exhibits that they helped you create?          6 A. They did.          7 Q. Which ones?          8 A. We dis -- well, they had questions about          9 several of them. At this point I can't recall          10 specifically.          11 Q. Which individual was asking you questions?          12 Or was it all three?          13 A. I believe it was just one. It's hard to          14 tell. It was via conference call.          15 Q. Do you know which person was asking you          16 questions?          17 A. It was one of the males, so it was either          18 David or David.          19 Q. Was anybody else on these calls with you          20 other than you and the folks at AGI?          21 A. Counsel, Josh, was on the phone.          22 MR. BARNES: And for that reason, I'm          23 instructing you not to answer any further questions          24 with respect to these phone calls.</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. BARNES: Hold on.          2 MR. KOBRIN: Some of it is before the          3 amended report was submitted, just to clarify.          4 MR. BARNES: Be clear -- first give him          5 the dates of the conversations and then secondly, to          6 the extent it related to the preparation of any draft          7 report, including any amended report, do not divulge          8 that information.          9 A. Fair enough. So we discussed the          10 conversations that I had that were related to preparing          11 for the deposition. They helped me with just mock          12 questions for the deposition and helping me to prepare.          13 BY MR. BOGLE:          14 Q. Did they provide those mock questions to          15 you orally or in writing?          16 A. It was just -- they were just asking          17 questions via conference call.          18 Q. What sort of questions did they ask you?          19 A. They were just prepping me, helping to          20 prep me for the deposition.          21 Q. Do you recall anything they asked you?          22 A. They were asking questions about the          23 report. We were role-playing.          24 Q. What specifically did they ask you?</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. BOGLE:          2 Q. Was counsel asking you questions as          3 well -- mock questions? I'm not asking you what the          4 questions are. I'm just asking if he asked you          5 questions -- mock questions.          6 MR. BARNES: I really think this is          7 invading privilege, so I'm going to instruct the          8 witness not to answer.          9 BY MR. BOGLE:          10 Q. Have you met with any counsel other than          11 those representing HBC related to your work in this          12 case?          13 A. No.          14 Q. Did you create any outlines or notes to          15 assist you in the deposition today?          16 A. No.          17 Q. Did you bring anything with you to the          18 deposition today?          19 A. No.          20 Q. And we don't need to hash all this out          21 now, but we're going to likely be requesting a          22 deposition for the individuals at AGI related to their          23 work with Ms. Kinsey. So we could talk about that          24 later, but -- and I also think that we're entitled to</p>



<p style="text-align: right;">Page 30</p> <p>1 ask a lot of these questions that you're instructing  2 her not to answer related to their work.  3 MR. KOBRIN: On what basis --  4 MR. BOGLE: So we'll reserve on that -- I  5 don't think it's privileged.  6 MR. KOBRIN: On what basis would you be  7 seeking a deposition?  8 MR. BOGLE: For their work in creating  9 this report.  10 MR. BARNES: You believe you have a right  11 to depose consulting experts who assisted testifying  12 experts? Is that what you're saying?  13 MR. BOGLE: Yeah, that actually created  14 exhibits that she's relying on for her opinions?  15 Absolutely.  16 MR. BARNES: We disagree.  17 MR. BOGLE: Okay.  18 BY MR. BOGLE:  19 Q. Prior to your work in --  20 MR. BARNES: You're going to have a lot of  21 depositions if you go down that road.  22 BY MR. BOGLE:  23 Q. Prior to your work in this case, have you  24 ever done any consulting or litigation work for HBC?</p>	<p style="text-align: right;">Page 32</p> <p>1 anti-diversion efforts?  2 A. No.  3 Q. Is this related to an ongoing litigation?  4 A. No.  5 Q. Was it in a consulting capacity?  6 A. Yes.  7 Q. Have you ever published anything related  8 to opioids?  9 A. No.  10 Q. Have you ever conducted a risk-benefit  11 analysis for a patient contemplating taking opioids?  12 MR. BARNES: Objection to the form.  13 Vague.  14 A. I mean, when you -- so what do you mean by  15 risk-benefit analysis?  16 BY MR. BOGLE:  17 Q. Meaning did you ever discuss with a  18 patient the risks and benefits of opioids for a patient  19 who was contemplating taking --  20 A. Yes.  21 Q. How many times?  22 A. Several.  23 Q. How recently?  24 A. Tuesday.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. No.  2 Q. Had you ever heard of HBC prior to your  3 work in this case?  4 A. No.  5 Q. Prior to your work in this case, had you  6 ever done any consulting or litigation work related to  7 any opioid product?  8 A. No. Oh. Yes.  9 Q. What did you do?  10 A. I provided some subject matter expertise  11 to Amneal Pharmaceuticals on Suboxone.  12 Q. What was the nature of the expertise you  13 provided them?  14 A. Retail pharmacy practice.  15 Q. What specifically did you tell them?  16 A. I mean, that's a long conversation with  17 them, and it's also under protective order, but in  18 general it was about the drug and how pharmacy practice  19 works with respect to drug substitution between brands  20 and generics.  21 Q. Did you advise them in any way regarding  22 suspicious order monitoring?  23 A. No.  24 Q. Did you advise them in any way related to</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And what did you tell the patient?  2 A. A lot of what is in the patient  3 information sheets that are included in my exhibit --  4 or included in my report.  5 Q. How long was your conversation with that  6 patient?  7 A. Roughly five minutes.  8 Q. And did you ultimately offer an opinion as  9 to whether that patient should or should not take the  10 opioid product?  11 MR. BARNES: I'm going to object. We're  12 here for her expert opinion in this case, not with  13 respect to what she may have advised the patient.  14 MR. BOGLE: I'm entitled to know about her  15 knowledge related to opioids. This is clearly  16 relevant.  17 MR. BARNES: And now you're asking her  18 about an opinion given to a patient?  19 MR. BOGLE: Yeah.  20 MR. BARNES: That's totally unrelated to  21 the case?  22 MR. BOGLE: It's not totally unrelated.  23 It goes to her knowledge of opioids.  24 MR. BARNES: It's totally unrelated.</p>

<p style="text-align: right;">Page 34</p> <p>1 BY MR. BOGLE:</p> <p>2 Q. It's about opioids. You can answer.</p> <p>3 A. Will you ask the question again, please?</p> <p>4 Q. Sure. Did you ultimately offer an opinion</p> <p>5 as to whether or not that patient should or should not</p> <p>6 take the opioid product?</p> <p>7 MR. BARNES: Same objection.</p> <p>8 MS. FUMERTON: This is Tara Fumerton. I'm</p> <p>9 just going to add in an objection that I disagree that</p> <p>10 you can ask any question that relates to an opioid, so</p> <p>11 again, to the scope of the question, I join in</p> <p>12 counsel's objection.</p> <p>13 BY MR. BOGLE:</p> <p>14 Q. Okay. You can answer.</p> <p>15 A. Will you ask the question again, please?</p> <p>16 Q. Sure. Did you offer an opinion to that</p> <p>17 patient as to whether or not they should take the</p> <p>18 opioid product?</p> <p>19 A. No.</p> <p>20 Q. Did they ask for your opinion in that</p> <p>21 regard?</p> <p>22 A. No.</p> <p>23 Q. Do you recall telling them anything about</p> <p>24 opioids other than what's contained in the medical</p>	<p style="text-align: right;">Page 36</p> <p>1 The physician asked me to tear the prescription up.</p> <p>2 There's a num -- that's a couple of reasons why I would</p> <p>3 not fill a prescription.</p> <p>4 Q. When you say you were uncomfortable with a</p> <p>5 prescription, what made you uncomfortable?</p> <p>6 A. Sometimes when you can't get a hold of the</p> <p>7 physician and you're looking at the prescription itself</p> <p>8 and you disagree with the quantity or the directions or</p> <p>9 the frequency in which a patient is being prescribed or</p> <p>10 receiving the medication, I would make the judgment</p> <p>11 decision not to fill it.</p> <p>12 Q. And can you tell me -- you said several</p> <p>13 times that you made a recommendation or that you</p> <p>14 decided not to fill an opioid prescription. Can you</p> <p>15 give me more detail on how many times that's occurred?</p> <p>16 A. No.</p> <p>17 Q. You don't have any more detail other than</p> <p>18 several?</p> <p>19 A. It happens quite frequently. Patients</p> <p>20 don't realize the last time they picked up their</p> <p>21 prescription and so they come back in to pick up their</p> <p>22 next prescription, and you just tell them I can't fill</p> <p>23 it today but I can fill it in three days or I can fill</p> <p>24 it in four days. Working for an oncology clinic, I</p>
<p style="text-align: right;">Page 35</p> <p>1 information sheet?</p> <p>2 A. No.</p> <p>3 Q. Have you ever offered a recommendation to</p> <p>4 a patient to take or not take an opioid product?</p> <p>5 A. Yes.</p> <p>6 Q. In what capacity?</p> <p>7 A. As a pharmacist.</p> <p>8 Q. And what was your recommendation?</p> <p>9 A. I mean, I make multiple recommendations to</p> <p>10 support a physician's diagnosis and treatment plan.</p> <p>11 Q. So did you recommend they take the product</p> <p>12 or not?</p> <p>13 A. I recommend they follow the prescriber's</p> <p>14 treatment plan.</p> <p>15 Q. Have you ever personally made the decision</p> <p>16 to refuse to fill an opioid prescription?</p> <p>17 A. Yes.</p> <p>18 Q. How many times?</p> <p>19 A. Several.</p> <p>20 Q. Under what circumstances?</p> <p>21 A. What do you mean by under what</p> <p>22 circumstances?</p> <p>23 Q. Why did you refuse?</p> <p>24 A. I was uncomfortable with the prescription.</p>	<p style="text-align: right;">Page 37</p> <p>1 have that conversation frequently.</p> <p>2 Q. Specific to opioids?</p> <p>3 A. Specific to opioids. But it also happens</p> <p>4 with other drugs. It's not limited to opioids.</p> <p>5 Q. Have you ever designed a suspicious order</p> <p>6 monitoring program for controlled substances?</p> <p>7 A. What do you mean by suspicious order</p> <p>8 monitoring program?</p> <p>9 Q. Are you unclear on what that term means as</p> <p>10 it relates to controlled substances?</p> <p>11 A. No, I'm trying to understand what elements</p> <p>12 of that that you're getting at.</p> <p>13 Q. I'm just asking generally whether you've</p> <p>14 designed a suspicious order monitoring program for</p> <p>15 controlled substances.</p> <p>16 MR. BARNES: And she's asked you to</p> <p>17 explain what you mean by that term.</p> <p>18 BY MR. BOGLE:</p> <p>19 Q. What do you mean by that term?</p> <p>20 A. I'm not asking the question.</p> <p>21 Q. I get to ask the questions.</p> <p>22 A. I understand --</p> <p>23 Q. So --</p> <p>24 A. -- but I'm seeking clarity.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. How do you define a suspicious order  2 monitoring program as it relates to controlled  3 substances?  4 A. I mean, it's a multifaceted system that is  5 defined by the Controlled Substances Act.  6 Q. What are the facets of that system -- of  7 those systems?  8 A. I mean, reading the Controlled Substances  9 Act, it is -- it has a number of security requirements,  10 storage requirements, all aimed to protect against  11 theft and diversion, of which a suspicious order  12 monitoring system is a small part.  13 Q. Have you ever designed any component of a  14 suspicious order monitoring system for controlled  15 substances?  16 MR. BARNES: You mean as she has defined  17 it?  18 MR. BOGLE: Sure.  19 A. I have assisted in developing operational  20 policies and procedures to protect against theft and  21 diversion, yes.  22 BY MR. BOGLE:  23 Q. What types of operational procedures?  24 A. Everything from inventory management,</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Have you ever designed a suspicious order  2 monitoring program for a pharmaceutical distributor?  3 A. No.  4 Q. Have you ever designed a suspicious order  5 monitoring program for a pharmaceutical manufacturer?  6 A. No.  7 MR. BARNES: Just for clarity, I'm not  8 sure you both are on the same page in terms of  9 suspicious order monitoring. You gave a definition and  10 he won't give you his definition, so I'd want to make  11 sure that you're not adopting some definition that has  12 been unexplained to you.  13 A. So I will amend the -- or I will change my  14 answer about the distributor. I have been involved,  15 again, with a suspicious order monitoring program as  16 it's defined very broadly, including the security  17 requirements and all of the things that an organization  18 will do regarding theft and diversion prevention.  19 BY MR. BOGLE:  20 Q. For what distributor?  21 A. I've worked on things for Walmart, for --  22 for Walmart.  23 Q. What components of Walmart's suspicious  24 order monitoring program for controlled substances did</p>
<p style="text-align: right;">Page 39</p> <p>1 counting and back-counting procedures, location and  2 safety parameters for opioids -- those kinds of things.  3 Q. When you say safety parameters for  4 opioids, what do you mean?  5 A. Where to store them in the pharmacy, what  6 types of cabinets, vaults, safes that are used.  7 Q. Have you ever designed a system to flag  8 suspicious orders of controlled substances?  9 A. Flag electronically?  10 Q. Sure.  11 A. No.  12 Q. How about manually?  13 A. That's a hard question to answer, because  14 as a pharmacist, part of our pharmacy practice is to  15 scrutinize every controlled substance prescription,  16 particularly around opioids, so teaching and training  17 is part of my job and part of my experience, and  18 teaching pharmacists how to identify questions within a  19 prescription was part of my job and continues to be  20 part of my practice.  21 Q. Have you ever drafted written procedures  22 for how to detect suspicious controlled substances  23 orders?  24 A. I don't recall.</p>	<p style="text-align: right;">Page 41</p> <p>1 you design?  2 MS. FUMERTON: I object to the form of the  3 question and the specifics of going to a fact  4 deposition effectively of her time at Walmart.  5 BY MR. BOGLE:  6 Q. You can answer.  7 MS. FUMERTON: I think in broad strokes  8 she can talk about her experience, but beyond that,  9 it's inappropriate.  10 MR. BOGLE: Okay. So you guys aren't  11 allowed to make speaking objections. So I hear you,  12 but you're not allowed to make speaking objections.  13 BY MR. BOGLE:  14 Q. So you can answer the question.  15 A. Part of my job at Walmart was to work on  16 operations. I was a pharmacist there. Part of the  17 operations, part of the distribution, everything from  18 being a pharmacist to an executive. I worked on a  19 number of different facets at Walmart over my 17-year  20 career that worked on different programs, policies, and  21 procedures to prevent theft and diversion.  22 Q. What components of Walmart's suspicious  23 order monitoring program for controlled substances did  24 you design?</p>

<p style="text-align: right;">Page 42</p> <p>1 MS. FUMERTON: Objection to form.</p> <p>2 MR. BARNES: Now, hold on. Yeah. I'm</p> <p>3 going to instruct the witness you can testify generally</p> <p>4 about your experience and background, but you're not</p> <p>5 going to convert this into a fact deposition of</p> <p>6 Walmart.</p> <p>7 MR. BOGLE: I'm entitled to know about her</p> <p>8 expertise in this area.</p> <p>9 MR. BARNES: And that's all you're</p> <p>10 entitled to, and I'm instructing her do not get into</p> <p>11 details about Walmart's policies, Walmart's</p> <p>12 decision-making, anything like that. What your</p> <p>13 experience and duties were generally is fine.</p> <p>14 BY MR. BOGLE:</p> <p>15 Q. What components of Walmart's suspicious</p> <p>16 order monitoring program did you design?</p> <p>17 MR. BARNES: Same instruction.</p> <p>18 MS. FUMERTON: Object to form. Outside</p> <p>19 the scope.</p> <p>20 A. Again, in general, I was responsible as</p> <p>21 part of the operational leadership team for general</p> <p>22 policies and procedures regarding prevention of theft</p> <p>23 and diversion.</p> <p>24 BY MR. BOGLE:</p>	<p style="text-align: right;">Page 44</p> <p>1 automated system to flag suspicious orders of</p> <p>2 controlled substances while at Walmart?</p> <p>3 MS. FUMERTON: Objection. Form. And I</p> <p>4 think needs clarification at the distribution or the</p> <p>5 pharmacy level.</p> <p>6 MR. BOGLE: Either. I'm asking either</p> <p>7 right now.</p> <p>8 MR. BARNES: And what do you mean by</p> <p>9 create?</p> <p>10 MR. BOGLE: Design. And you don't get to</p> <p>11 ask questions either, so --</p> <p>12 A. So --</p> <p>13 MR. BARNES: I don't take instructions</p> <p>14 from you, by the way, and won't, so you can end that</p> <p>15 little practice.</p> <p>16 A. So I will answer again. My opinion is</p> <p>17 that a suspicious order monitoring program to prevent</p> <p>18 theft and diversion is multifaceted and begins as a</p> <p>19 pharmacist scrutinizes the prescription all the way</p> <p>20 through the operational process until the order is then</p> <p>21 fulfilled by the distribution centers.</p> <p>22 BY MR. BOGLE:</p> <p>23 Q. Did you ever create an automated system to</p> <p>24 flag suspicious orders of controlled substances while</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Did you design any of those policies or</p> <p>2 procedures? Did you write any of them?</p> <p>3 A. I don't recall.</p> <p>4 Q. Were you responsible at Walmart for</p> <p>5 creating a manual or automated system to flag</p> <p>6 suspicious orders of controlled substances?</p> <p>7 A. An elec -- are you asking me about an</p> <p>8 electronic system?</p> <p>9 Q. I believe my question was manual or</p> <p>10 automated.</p> <p>11 A. As part of standard operating procedures,</p> <p>12 every pharmacist is involved in prevention of theft and</p> <p>13 diversion, so manual procedures in my opinion include</p> <p>14 every time a pharmacist scrutinizes a prescription,</p> <p>15 it's part of a suspicious order monitoring program.</p> <p>16 Q. My question is whether you created any</p> <p>17 such system, not whether you operated under one.</p> <p>18 A. To me the system includes all the policies</p> <p>19 and procedures that begin at store level and flow all</p> <p>20 the way through to the distribution, so so far as I</p> <p>21 have created manuals or operational procedures that</p> <p>22 begin at the pharmacy level, that's what I'm referring</p> <p>23 to.</p> <p>24 Q. But have you created any manual or</p>	<p style="text-align: right;">Page 45</p> <p>1 at Walmart?</p> <p>2 A. No.</p> <p>3 Q. And did you ever draft any written</p> <p>4 policies while at Walmart that were specifically aimed</p> <p>5 at detecting suspicious orders at the distribution</p> <p>6 level?</p> <p>7 MS. FUMERTON: Objection. Form. Outside</p> <p>8 the scope.</p> <p>9 A. Will you ask that question again, please?</p> <p>10 BY MR. BOGLE:</p> <p>11 Q. Did you ever draft any written policies</p> <p>12 while at Walmart that were specifically aimed at</p> <p>13 detecting suspicious orders of controlled substances at</p> <p>14 the distribution center level?</p> <p>15 A. No.</p> <p>16 Q. Have you ever designed a program that was</p> <p>17 designed to block suspicious orders of controlled</p> <p>18 substances?</p> <p>19 A. No.</p> <p>20 MR. BARNES: Same objection. Make sure</p> <p>21 you're on the same -- you're using the same terms.</p> <p>22 BY MR. BOGLE:</p> <p>23 Q. Outside the context of this litigation,</p> <p>24 has HBC ever retained you to evaluate its suspicious</p>

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1 order monitoring program for controlled substances?  
2 A. No.  
3 Q. Have you ever been retained as an expert  
4 or a consultant to evaluate a suspicious order  
5 monitoring program for controlled substances for a  
6 company?  
7 A. No.  
8 Q. From 1992 to present, has all of your  
9 financial compensation from an employment perspective  
10 come from companies that sell pharmaceutical products?  
11 MS. FUMERTON: Objection. Form.  
12 A. No.  
13 BY MR. BOGLE:  
14 Q. What aspect of your compensation during  
15 that time period has not come from those companies?  
16 A. Well, I've worked for companies that  
17 aren't involved in pharmaceuticals.  
18 Q. Which ones?  
19 A. Well, I worked for RediClinic, which is  
20 in -- which is a medical clinic. And I have some  
21 consulting contracts that do not involve  
22 pharmaceuticals.  
23 Q. And what companies are those for?  
24 A. I don't have a complete list of all of my

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1 clients as an executive consultant.  
2 Q. From 1992 to present, what percentage of  
3 your income related to employment has come from  
4 companies selling pharmaceutical products?  
5 MR. BARNES: I'm going to object to form.  
6 And where is this 1992 date coming from? Is that just  
7 a random date you selected?  
8 MR. BOGLE: Why does it matter where it  
9 came from?  
10 MR. BARNES: It matters because there's a  
11 thing called relevance, so --  
12 BY MR. BOGLE:  
13 Q. You can answer my question.  
14 MR. BARNES: No. Don't answer the  
15 question beyond the last 10 years. I don't see where  
16 you get this relevance with 1992.  
17 MR. BOGLE: You're instructing her not to  
18 answer beyond the last 10 years?  
19 MR. BARNES: Yes. Yes. Yes.  
20 MR. BOGLE: Based on what?  
21 MR. BARNES: Based upon the same  
22 randomness that you picked 1992 out of the air.  
23 MR. BOGLE: So you -- based on relevance  
24 you're telling her not to answer a question?

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1 MR. BARNES: I'm telling you where -- I  
2 asked you where 1992 came from and you wouldn't tell  
3 me, so --  
4 MR. BOGLE: I just want to make sure I  
5 understand the basis for your instruction. It's based  
6 on your view that it's not relevant?  
7 MR. BARNES: Do you even remember 26 years  
8 ago?  
9 MR. BOGLE: No, no, no, no, no, no, no.  
10 You don't get to ask her questions. No, no, no, no,  
11 no. That's now how this works.  
12 MR. BARNES: Actually, I do.  
13 MR. BOGLE: No, no, no.  
14 MR. BARNES: When you're done I will ask  
15 her questions.  
16 MR. BOGLE: That's fine. I'm not done.  
17 BY MR. BOGLE:  
18 Q. From 1992 to present, what percentage of  
19 your income has come from companies selling  
20 pharmaceutical products?  
21 MR. BARNES: Object to form. Lack of  
22 relevance.  
23 A. I can't recall.  
24 BY MR. BOGLE:

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1 Q. Any approximation whatsoever?  
2 A. I would have to spend some time looking at  
3 it.  
4 Q. Okay. Well, how about -- let's take your  
5 counsel's date, for example, then. Over the last 10  
6 years, what percentage of your income has come from  
7 companies selling pharmaceutical products?  
8 A. I don't know. I'd have to look at it. I  
9 don't keep those percentages in my head.  
10 Q. What about the last five years?  
11 A. Again, same answer. I don't know unless I  
12 look.  
13 Q. How about the last two years?  
14 A. I would have to look. Otherwise I'm  
15 speculating as a percent and I'm not going to  
16 speculate.  
17 Q. Within the last 12 months?  
18 A. I'm not going to speculate what percentage  
19 of my income.  
20 Q. Over the last 12 months you don't know  
21 what percentage of your income has come from --  
22 A. Off the top of my head, no. I haven't  
23 done the math.  
24 Q. You have no idea what that number is?



<p style="text-align: right;">Page 50</p> <p>1 A. I'm not going to speculate.</p> <p>2 Q. That wasn't my question. You have no idea</p> <p>3 what that number is; is that true?</p> <p>4 A. I'm not going to guess.</p> <p>5 Q. That's not an answer to my question.</p> <p>6 MR. BARNES: All right. I think this is</p> <p>7 enough. Let's move on.</p> <p>8 BY MR. BOGLE:</p> <p>9 Q. My question was do you have no idea what</p> <p>10 that number is over the last 12 months?</p> <p>11 MR. BARNES: And she's asked and answered</p> <p>12 it three times.</p> <p>13 MR. BOGLE: No, she hasn't.</p> <p>14 MR. BARNES: Let's move on.</p> <p>15 A. I'm not going to guess.</p> <p>16 BY MR. BOGLE:</p> <p>17 Q. So it would be a guess in your regard in</p> <p>18 the last 12 months?</p> <p>19 A. Yes, if you're looking for a percentage</p> <p>20 number, I would have to guess.</p> <p>21 Q. When were you first contacted to conduct</p> <p>22 work in this case?</p> <p>23 A. I believe it was December, January time</p> <p>24 frame.</p>	<p style="text-align: right;">Page 52</p> <p>1 any other fashion presently?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Have you ever advertised for your expert</p> <p>4 services in any fashion other than the website you've</p> <p>5 given me?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. When did you start looking at documents in</p> <p>8 this case?</p> <p>9 A. In January of 2019.</p> <p>10 Q. If we go to Exhibit 6, which is your</p> <p>11 invoices. You have those?</p> <p>12 A. Yes.</p> <p>13 Q. The first date listed for document review</p> <p>14 is February 7th, 2019. Is that accurate, or should it</p> <p>15 be January?</p> <p>16 A. That's accurate for my invoice, yes.</p> <p>17 Q. Is that not accurate as to the actual work</p> <p>18 you did?</p> <p>19 A. There were -- to prepare for my meeting</p> <p>20 with Bob in January when I came in for my initial</p> <p>21 discussions, he did give me some initial documents to</p> <p>22 review and to make sure that I had no conflicts.</p> <p>23 Q. What documents did you get before you were</p> <p>24 retained?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. December 2018, January 2019?</p> <p>2 A. Yes, it was in January of 2019.</p> <p>3 Q. Who contacted you?</p> <p>4 A. Bob Barnes with Marcus &amp; Shapira.</p> <p>5 Q. Were you advertising for your expert</p> <p>6 services at that point in time?</p> <p>7 A. Define advertising for me.</p> <p>8 Q. Yeah. Were you using any sort of</p> <p>9 third-party service to put out in the public sphere</p> <p>10 that you were an expert witness?</p> <p>11 A. I am listed on a website, but it's a we --</p> <p>12 but it's a -- I don't know what you call it. It's --</p> <p>13 I'm listed on a website, but it's something -- but just</p> <p>14 as -- and it has my résumé out there.</p> <p>15 Q. What's the website?</p> <p>16 A. Well, it's like LinkedIn but for pharmacy</p> <p>17 law.</p> <p>18 Q. What's the name of the website?</p> <p>19 A. I believe it's American Society of</p> <p>20 Pharmacy Law, and it's a membership-based service that</p> <p>21 I pay for.</p> <p>22 Q. How much do you pay for that?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you advertise your expert services in</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I don't know exactly. He gave me the</p> <p>2 initial complaint, I believe, to review to familiarize</p> <p>3 myself with the companies and the people involved in</p> <p>4 the case to make sure that I was qualified to render an</p> <p>5 opinion and that I didn't have any conflicts.</p> <p>6 Q. Anything else beyond that before you were</p> <p>7 retained?</p> <p>8 A. I don't re -- I don't recall.</p> <p>9 Q. What were you asked to do in this case?</p> <p>10 A. I was asked to explain and talk about</p> <p>11 typical pharmacy practices regarding prescriptions,</p> <p>12 supply chain and distribution involving</p> <p>13 self-distributors and the relationship between the</p> <p>14 pharmacy, the corporate office, and the distributors</p> <p>15 themselves, and then to take a look at Giant Eagle's</p> <p>16 controls and render an opinion whether or not they were</p> <p>17 in compliance with the Controlled Substances Act.</p> <p>18 Q. Have you ever been retained as an expert</p> <p>19 in a case and reviewed the materials and ultimately</p> <p>20 concluded that you couldn't offer the opinions you were</p> <p>21 being asked to offer?</p> <p>22 A. No. But I don't get involved in a case if</p> <p>23 I can't stand by my opinions.</p> <p>24 Q. Yeah, so what I asked you was have you</p>

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1 ever been retained as an expert in a case, ultimately  
2 reviewed the materials, and concluded that you couldn't  
3 offer the opinions you were being asked to offer?  
4 A. No.  
5 Q. Your work in the opioid litigation -- is  
6 it specific to the trial case involving Summit and  
7 Cuyahoga Counties, or is it broader than that?  
8 A. Right now it's just Summit and Cuyahoga  
9 County.  
10 Q. Have you been retained for any other  
11 opioid cases beyond those involving Summit and  
12 Cuyahoga?  
13 A. No.  
14 Q. Have you ever practiced as a pharmacist in  
15 either Summit or Cuyahoga County, Ohio?  
16 A. No.  
17 Q. Now, the hours that you've listed on the  
18 invoices marked as Exhibit 6 -- are those hours  
19 complete and accurate from the time you started working  
20 on the case through May 31st, 2019?  
21 A. Yes.  
22 Q. And how many hours have you worked from  
23 June 1st to the present on this case?  
24 A. Roughly 40.

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1 Q. And those 40 hours would be paid at the  
2 rate of \$500 an hour; is that right?  
3 A. Yes.  
4 Q. So once you are paid for those hours, you  
5 will have been paid approximately \$154,000 in this  
6 case? Does that sound right to you?  
7 A. Yes.  
8 Q. And per your invoices, Exhibit 6, it notes  
9 you started writing the expert report on April 29th.  
10 That's on the fourth page of the invoices. Do you see  
11 that?  
12 A. I do.  
13 Q. Is that accurate?  
14 A. Well, I began drafting the outline earlier  
15 than that.  
16 Q. But actually drafting the report itself  
17 began April 29th, 2019; is that true?  
18 A. I mean, to me it all runs together between  
19 the outline and the report, but yes, the actual  
20 verbiage for the report began that last week in April.  
21 Q. And there's an entry here on April 15th --  
22 April 15th to 19th, 2019, again on that same page, the  
23 last entry there says review and respond to Pharmacy  
24 Times article, one hour. Do you see that?

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1 A. Yes.  
2 Q. What does that relate to?  
3 A. Counsel sent me an article in Pharmacy  
4 Times that dealt with -- I believe it was shortages of  
5 opioids in the market.  
6 Q. And when you say respond to, what sort of  
7 response did you provide to that article?  
8 A. Oh, it was around DEA -- I'm trying to  
9 remember what that article was about, but it was just  
10 convers -- it was just a response back to counsel  
11 agreeing with the article and adding additional  
12 commentary.  
13 Q. Did you provide any sort of published  
14 response to that article?  
15 A. What do you -- no.  
16 Q. Are you currently conducting any work on  
17 this case that's not referenced in your initial or  
18 amended reports?  
19 A. No.  
20 Q. Did you draft your expert reports  
21 yourself?  
22 A. Yes.  
23 Q. Are there any portions of your reports  
24 that you did not personally draft?

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1 A. There were some paragraphs that were added  
2 or were offered by the Analysis Group, but all of it  
3 was reviewed, edited, and amended by me to reflect my  
4 opinions.  
5 Q. What paragraphs came from Analysis Group?  
6 Can you point me to where those are in your report?  
7 A. The paragraphs would be the ones around  
8 some of the exhibits.  
9 Q. And take whatever time you need. Just let  
10 me know.  
11 A. Okay.  
12 MR. BARNES: Brandon, we've been going  
13 about an hour, and whenever you're at a good breaking  
14 point, I think we'll --  
15 MR. BOGLE: As soon as she answers this  
16 question, I'm fine to stop for a break.  
17 A. So the first one would be F.1.  
18 Q. Can you give me a Page Number for your  
19 report?  
20 A. Page 26. Actually, probably Page 27.  
21 MR. BARNES: You're looking at Exhibit 2,  
22 the amended report?  
23 A. I am. I'm sorry. Yes. So -- and when I  
24 say they offered information, it's because of the data

<p style="text-align: right;">Page 58</p> <p>1 that they came out, they would give me a paragraph and  2 I would take that paragraph and edit it and make sure  3 that it flowed within the report and reflected my  4 opinions. So they provided the substantiation for the  5 opinions that I was drawing.  6 BY MR. BOGLE:  7 Q. Which paragraphs are you referring to on  8 Page 27?  9 A. 72. 74. 76. 78. Paragraph 144, Page  10 50. Paragraph 145, Page 51. Paragraph 147. 148.  11 So for clarity, because I'm struggling  12 with this -- so that I can answer your question  13 correctly -- having discussions with them based on the  14 information that I wanted to put in my report, they  15 transcribed or they may have written some paragraphs,  16 but it was all based on my language or my ideas, so I'm  17 struggling answering what exactly it is that you want.  18 Q. That's what I'm asking you.  19 A. And I'm asking you for clarity.  20 Q. I'm asking you if they wrote any  21 paragraphs or provided any paragraphs to you that are  22 reflected in any way, shape, or form in your report.  23 A. Okay. And again, all of this is --  24 they're all my ideas and I edited and reviewed</p>	<p style="text-align: right;">Page 60</p> <p>1 THE VIDEOGRAPHER: We are going off the  2 record at 10:15 AM.  3 [A brief recess was taken.]  4 THE VIDEOGRAPHER: We are back on the  5 record at 10:36 AM.  6 BY MR. BOGLE:  7 Q. Ms. Kinsey, to follow up on where we left  8 off, do you have an understanding as to the process  9 that AGI followed to create any of the exhibits they  10 were responsible for creating in your report?  11 A. I don't understand your question.  12 Q. You want me to repeat or rephrase?  13 A. Rephrase.  14 Q. Okay. Do you have an understanding as to  15 the methodology that AGI employed to create any of the  16 exhibits that they created in your report?  17 A. So I'm con -- I don't understand your  18 question as far as methodology. They -- I mean, they  19 crunched the data for me.  20 Q. Okay. Do you know what process they  21 followed to do so, sort of walking me through the  22 process of what data they used, how they utilized it,  23 how they crunched the numbers? That's what I'm asking.  24 A. Yes. That should all be in my papers that</p>
<p style="text-align: right;">Page 59</p> <p>1 everything, so it's hard for me -- it's not their idea,  2 it's my idea, and they may have typed it as we were  3 talking on the phone, so that's why it's hard for me to  4 answer this question, because they're my ideas and they  5 just happened to transcribe them and then forward them  6 to me.  7 So if I didn't say it, it would be 149,  8 150, 151, and this would continue through -- it's --  9 163. Continue through 163. I'm sorry.  10 Q. 151 through 163?  11 A. Yes. And then there are parts of 164 to  12 167.  13 Q. What parts?  14 A. I can't recall at this time. Again, it  15 was a -- because I edited. They would have sent a  16 statement or two, and then I put other language in  17 there to make up the entire paragraph.  18 As I said, I'm struggling to answer your  19 question because I don't feel as though they wrote the  20 report. I wrote the report. They just gave me some  21 sentences here and there.  22 Q. Anything after Paragraph 167?  23 A. No.  24 MR. BOGLE: Okay. We can take a break.</p>	<p style="text-align: right;">Page 61</p> <p>1 were sent over.  2 Q. Okay. So for example, if we go to Exhibit  3 G in your amended report. I believe this is one of the  4 exhibits that you said that AGI was responsible for  5 creating; right?  6 A. Yes.  7 Q. Can you walk me through the process of how  8 they created this exhibit?  9 A. I don't understand the process you're  10 talking about. They crunched the data, and then they  11 took the data and they created a chart.  12 Q. What data did they crunch for this  13 exhibit?  14 A. It's listed under the sources.  15 Q. So what data is that, though?  16 A. It's the data that was supplied in the  17 case as part of discovery.  18 Q. So under Sources A, for example, what data  19 is that?  20 A. I would have to pull that exact -- so it's  21 going to be the DEA quota information as well as the  22 HCP distribution information.  23 Q. And for sources under B, for example, it  24 talks about the quota history for selected substances</p>

<p style="text-align: right;">Page 62</p> <p>1 from the DEA. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Is it your understanding that the quotas</p> <p>4 that are created by the DEA are for distributors to</p> <p>5 track their distribution of opioids?</p> <p>6 A. No. Quotas are created by the DEA for</p> <p>7 manufacturers.</p> <p>8 Q. So has there ever been a quota created for</p> <p>9 HBC, for example, for any opioid product by the DEA?</p> <p>10 A. No.</p> <p>11 Q. Going back to your invoices, Exhibit 6.</p> <p>12 You have that?</p> <p>13 A. I do.</p> <p>14 Q. On the first page for February 12th and</p> <p>15 13th, one of the things you have listed is an interview</p> <p>16 with Rick Shaheen, security manager at Giant Eagle. Do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. So he is a -- based on this, a current</p> <p>20 employee of Giant Eagle; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And what did you discuss with him?</p> <p>23 A. It was really a conversation -- I was on</p> <p>24 the phone, so it was a conversation between Bob and</p>	<p style="text-align: right;">Page 64</p> <p>1 expert witness.</p> <p>2 Q. Did he provide you any information about</p> <p>3 HBC's suspicious order monitoring program over time?</p> <p>4 MR. BARNES: Anything related to that</p> <p>5 meeting is privileged, but you can answer anything</p> <p>6 outside that meeting.</p> <p>7 A. Not -- most of what I got from Jim came</p> <p>8 from his deposition.</p> <p>9 BY MR. BOGLE:</p> <p>10 Q. Anybody from Giant Eagle ever given you</p> <p>11 information about Giant Eagle or HBC's suspicious order</p> <p>12 monitoring programs?</p> <p>13 A. Not outside the depositions that I've</p> <p>14 read.</p> <p>15 Q. Have you talked to anybody else at Giant</p> <p>16 Eagle or HBC other than the two we've talked about?</p> <p>17 A. I can't recall. I don't know if -- there</p> <p>18 may have been -- their internal counsel may have been</p> <p>19 there that same day. I can't recall.</p> <p>20 Q. Is your understanding that Jim Tsipakis is</p> <p>21 an attorney?</p> <p>22 A. No, he's not.</p> <p>23 Q. Was the conversation involving him prior</p> <p>24 to you being retained as an expert in this case?</p>
<p style="text-align: right;">Page 63</p> <p>1 Rick, and we were just discussing the --</p> <p>2 MR. BARNES: Hold on. If it involved</p> <p>3 counsel, I'm instructing you not to answer.</p> <p>4 BY MR. BOGLE:</p> <p>5 Q. Is Mr. Shaheen a lawyer, to your</p> <p>6 understanding?</p> <p>7 A. No.</p> <p>8 Q. Did your discussion with Mr. Shaheen</p> <p>9 impact in any way the opinions you're offering in this</p> <p>10 case?</p> <p>11 A. No.</p> <p>12 Q. So you didn't utilize anything that he</p> <p>13 told you in reaching any of your opinions? Is that</p> <p>14 your testimony?</p> <p>15 A. Correct.</p> <p>16 Q. Did you talk to anybody else at Giant</p> <p>17 Eagle about your work in this case?</p> <p>18 A. I spoke a little bit with Jim Tsipakis.</p> <p>19 Q. Say that name again.</p> <p>20 A. Jim Tsipakis.</p> <p>21 Q. And what did you talk to him about?</p> <p>22 A. He was in my initial meeting when I came</p> <p>23 in and we were discussing pieces of the case to</p> <p>24 determine whether or not I was qualified to be their</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes.</p> <p>2 Q. And since you had not been retained at</p> <p>3 that point, that's before you had started writing your</p> <p>4 report; right?</p> <p>5 A. Correct.</p> <p>6 Q. So I'll ask again. What did you talk</p> <p>7 about with Mr. Tsipakis?</p> <p>8 MR. BARNES: If it was in the presence of</p> <p>9 counsel for HBC, I instruct you not to answer.</p> <p>10 MR. BOGLE: Despite the fact that she's</p> <p>11 not operating as an ex -- in an expert capacity and she</p> <p>12 wasn't writing a report?</p> <p>13 MR. BARNES: We're entitled to meet with</p> <p>14 experts.</p> <p>15 MR. BOGLE: Okay. I'm just making sure I</p> <p>16 understand your objections when we raise it later.</p> <p>17 Okay, so you're instructing her not to answer, though?</p> <p>18 MR. BARNES: Did you get that? Is that</p> <p>19 already on the record? Okay.</p> <p>20 THE REPORTER: I mean, it's right there --</p> <p>21 whatever you said.</p> <p>22 MR. BARNES: Okay.</p> <p>23 MR. BOGLE: I'm just making sure you are.</p> <p>24 MR. BARNES: Yes. Yes.</p>

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1 MR. BOGLE: Okay.  
 2 BY MR. BOGLE:  
 3 Q. Have you spoken to anyone employed by  
 4 GERx?  
 5 A. No.  
 6 Q. Have you ever been retained by Marcus &  
 7 Shapira other than in this case?  
 8 A. No.  
 9 Q. And your rate for expert work in this case  
 10 is \$500 per hour; is that right?  
 11 A. Correct.  
 12 Q. Is that for all work, or does that differ  
 13 depending on what type of work you're doing in the  
 14 case?  
 15 A. It's for all work.  
 16 Q. For example, to make it clear, if you  
 17 testify in trial, is it \$500 an hour for that too?  
 18 A. Yes, it's a standard rate.  
 19 Q. Is \$500 the same -- \$500 an hour the same  
 20 rate you've used for all expert work since 2014?  
 21 A. Yes. May -- possibly. I may have made a  
 22 change a couple of -- about a year-and-a-half ago. I  
 23 can't recall.  
 24 Q. So prior to a year-and-a-half ago, do you

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1 think you were charging more or less than \$500 an hour?  
 2 A. It's the standard rate. It's what I've  
 3 been using, yes.  
 4 Q. So just to make sure I understand. Prior  
 5 to a year-and-a-half ago, you did not change your rate?  
 6 A. I have not changed my -- I don't believe I  
 7 have changed my rate.  
 8 Q. The invoices we looked at as Exhibit 6 --  
 9 did you create these?  
 10 A. Yes.  
 11 Q. Do you have anybody else that works for  
 12 you at Kinsey Partners?  
 13 A. I have two people, yes.  
 14 Q. What do they do?  
 15 A. They are just administrative. They help  
 16 run errands, clean my office, those things.  
 17 Q. Anybody that would assist you doing any  
 18 substantive expert work?  
 19 A. No.  
 20 Q. Since you formed Kinsey Partners in 2014,  
 21 what percentage of your income has come from work for  
 22 pharmaceutical manufacturers, distributors, or  
 23 pharmacies?  
 24 A. Will you just -- will you read that

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1 question again, please?  
 2 Q. Sure. Since you formed Kinsey Partners in  
 3 2014, what percentage of your income has come from work  
 4 for pharmaceutical manufacturers, distributors, or  
 5 pharmacies?  
 6 A. Or pharm -- I would say almost 100  
 7 percent.  
 8 Q. Of that almost 100 percent, how much is  
 9 related to expert litigation work like this?  
 10 A. Maybe 30 to 40 percent.  
 11 Q. And the remainder would be consulting; is  
 12 that right?  
 13 A. Well, consulting and working as a  
 14 pharmacist, yes.  
 15 Q. What percentage of your income since 2014  
 16 has come from working as a pharmacist?  
 17 A. I don't know. I haven't done the math.  
 18 Q. Well, for example, in 2018, approximately  
 19 how much did you make dollar-wise working as a  
 20 pharmacist?  
 21 A. I don't know. I'd have to look. In 2018?  
 22 Q. Yeah.  
 23 A. Maybe \$50,000.  
 24 Q. Dollar-wise, how much have you made since

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1 2014 from your work with pharmaceutical manufacturers,  
 2 distributors, or pharmacies, total?  
 3 A. Oh. Since when?  
 4 Q. Since you formed Kinsey Partners in 2014.  
 5 MS. FUMERTON: Objection. Form.  
 6 A. I don't know. This is a math test. I  
 7 would have to speculate --  
 8 MR. BARNES: Don't speculate.  
 9 A. -- and I know you don't want me to do  
 10 that.  
 11 MR. BARNES: Don't speculate.  
 12 BY MR. BOGLE:  
 13 Q. You don't know?  
 14 A. I don't know.  
 15 Q. How about in 2018? Same question.  
 16 A. Again, almost 100 percent.  
 17 Q. I'm asking dollar figure, not percentage.  
 18 A. Oh, dollar figure. Roughly,  
 19 approximately, just last year, 350, maybe.  
 20 Q. And in 2018, how much did you make dollar  
 21 figure-wise for work not done for a pharmaceutical  
 22 manufacturer, distributor, or pharmacy?  
 23 A. I'm sorry. Which date? Twenty nine --  
 24 Q. 2018. I'm just sticking with 2018.



<p style="text-align: right;">Page 70</p> <p>1 A. Oh, 2018?</p> <p>2 Q. Right. That's what I asked you in the</p> <p>3 prior question, so --</p> <p>4 A. I'm sorry. It would all have been for a</p> <p>5 pharmacy or pharmacy manufacturer -- or pharmaceutical</p> <p>6 manufacturer or another manufacturer.</p> <p>7 Q. Do you have any stock ownership in a</p> <p>8 pharmaceutical manufacturer presently?</p> <p>9 A. Not directly. I don't know what it's in</p> <p>10 my mutual funds, but direct stock ownership, no.</p> <p>11 Q. Do you have any stock ownership presently</p> <p>12 in any pharmaceutical distributor?</p> <p>13 A. Not a specific pharmaceutical distributor,</p> <p>14 no. I have stock in Walmart, and so much as they are a</p> <p>15 pharmaceutical distributor, then I will disclose that.</p> <p>16 Q. What's the current value of your stock in</p> <p>17 Walmart?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you have any stocks in any other</p> <p>20 pharmacies that are publicly traded other than Walmart?</p> <p>21 A. Not directly, no.</p> <p>22 Q. When you say not directly, I want to make</p> <p>23 sure I know what that means.</p> <p>24 A. Well, if they're in mutual funds. I'm not</p>	<p style="text-align: right;">Page 72</p> <p>1 patenting any products?</p> <p>2 A. No.</p> <p>3 Q. Have you served as a key opinion leader</p> <p>4 for any pharmaceutical manufacturer or distributor or</p> <p>5 pharmacy since 2014?</p> <p>6 MR. BARNES: Object to form. Do you know</p> <p>7 what key opinion leader means?</p> <p>8 A. I mean, there's a number of -- I would ask</p> <p>9 you to clarify what you mean by key opinion leader.</p> <p>10 BY MR. BOGLE:</p> <p>11 Q. Have you been retained to sit on any</p> <p>12 boards or any meeting groups for any pharmacy,</p> <p>13 distributor, or manufacturer to provide your opinions?</p> <p>14 A. No.</p> <p>15 Q. I want to go to your testimony list in</p> <p>16 your report -- the amended report, which I think is --</p> <p>17 let's see what the exhibit is on that. Exhibit B, it</p> <p>18 appears. Are you there?</p> <p>19 A. Yes.</p> <p>20 Q. Exhibit B is titled litigation support for</p> <p>21 Sandra K.B. Kinsey. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you view yourself as providing</p> <p>24 litigation support in this case?</p>
<p style="text-align: right;">Page 71</p> <p>1 a finance guy, so I don't know what's in the mutual</p> <p>2 funds.</p> <p>3 Q. Since you opened Kinsey Partners in 2014,</p> <p>4 have you served as a paid consultant for any</p> <p>5 pharmaceutical distributor outside of your work in this</p> <p>6 case?</p> <p>7 A. Yes.</p> <p>8 Q. Which one?</p> <p>9 A. Anda and AmerisourceBergen.</p> <p>10 Q. What was the nature of your work with</p> <p>11 Anda?</p> <p>12 A. It was responding to RFPs for retailers,</p> <p>13 so working on contracts.</p> <p>14 Q. What was the nature of your work with ABC?</p> <p>15 A. ABC has -- gosh, we've done a couple of</p> <p>16 different things, from inventory management to OTC,</p> <p>17 over-the-counter sets within their Good Neighbor</p> <p>18 Pharmacy division.</p> <p>19 Q. Have you done any work related to</p> <p>20 suspicious order monitoring for controlled substances</p> <p>21 for ABC?</p> <p>22 A. No.</p> <p>23 Q. Since you opened Kinsey Partners in 2014,</p> <p>24 have you assisted any pharmaceutical manufacturer in</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes.</p> <p>2 Q. And you give a description of each case</p> <p>3 starting on this page and carrying over for the next</p> <p>4 two-and-a-half pages for each case you've worked on</p> <p>5 during this time frame; right?</p> <p>6 A. Yes.</p> <p>7 Q. Now, for the -- each case you provide a</p> <p>8 description of the nature of cases except for -- strike</p> <p>9 that. You see there's a section that says nature of</p> <p>10 cases for each litigation?</p> <p>11 A. Yes.</p> <p>12 Q. And there's a description after nature of</p> <p>13 cases that provides the type of case and then a</p> <p>14 description of the case.</p> <p>15 For example, if you look at the J &amp; J</p> <p>16 talcum powder litigation, you say plaintiff alleges</p> <p>17 progressive lung disease, cancer, and other serious</p> <p>18 diseases are caused by inhalation of asbestos fibers</p> <p>19 from exposure to defendants' products. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. You don't provide that kind of description</p> <p>23 for the opioid litigation, though, do you?</p> <p>24 A. No.</p>

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1 Q. Is there a reason why that's the only case  
 2 you don't provide that kind of narrative description  
 3 for?  
 4 A. No.  
 5 Q. If you were to write one, what would it  
 6 be?  
 7 A. I don't know. I'd have to think about it.  
 8 Q. And the cases on this list for these three  
 9 pages go back to 2016; right?  
 10 A. Yes.  
 11 Q. Prior to 2016, had you served in an expert  
 12 capacity in any case?  
 13 A. Not as an expert, no.  
 14 Q. So in what capacity did you work in a  
 15 litigation setting prior to 2016, if not as an expert?  
 16 A. I --  
 17 MR. BARNES: Object to form. She didn't  
 18 say that.  
 19 A. I worked as a 30(b)6 for Walmart back in  
 20 my Walmart days.  
 21 BY MR. BOGLE:  
 22 Q. Okay. Any other sworn testimony that you  
 23 provided prior to 2016?  
 24 A. No.

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1 Q. And from 2016 to present, is this a  
 2 complete list of cases in which you provided litigation  
 3 support or expert witness work?  
 4 A. Yes.  
 5 Q. How many times have you testified in a  
 6 deposition?  
 7 A. I believe it's eight. I think that's what  
 8 I put in my -- eight.  
 9 Q. What page are you on?  
 10 A. Four.  
 11 Q. You note here eight depositions and  
 12 testimony in four trials; right?  
 13 A. Correct.  
 14 Q. And for -- let's start with the  
 15 depositions. Each of the depositions -- were those --  
 16 was that testimony offered on behalf of a corporation?  
 17 A. Yes.  
 18 Q. For each of the trials, was that testimony  
 19 offered on behalf of a corporation?  
 20 A. Yes.  
 21 Q. So what we found on Pages 4 and 5 --  
 22 that's a complete list of your deposition and trial  
 23 testimony; is that true?  
 24 A. Yes.

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1 Q. Other than the 30(b)6? I'm sorry.  
 2 A. Yes.  
 3 Q. I'll grant you that. Which four trials  
 4 did you testify in?  
 5 A. Concordia versus Winder, GlaxoSmithKline  
 6 versus Glenmark. Testify or deposition?  
 7 Q. I'm asking about trial. You list --  
 8 A. Okay. I --  
 9 Q. You say you testified in four trials.  
 10 That's what I'm asking you -- which four?  
 11 A. Right. That's what I'm trying to recall.  
 12 So Valeant and ECI, Winder, Glaxo, and Teva. I can't  
 13 remember the fourth one. Oh, the Concordia case was  
 14 two trials. We had a PI hearing and then an actual  
 15 trial.  
 16 Q. Any others?  
 17 A. No.  
 18 Q. Are there any other cases where you  
 19 submitted an expert report but did not actually end up  
 20 testifying in any capacity?  
 21 A. Yes.  
 22 Q. What case is that, or cases?  
 23 A. So some of these cases are still pending.  
 24 I lost my CV. So I submitted an expert report in

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1 GlaxoSmithKline versus Glenmark.  
 2 Q. Can you tell me where you're at?  
 3 A. I'm in my CV. When you look at my  
 4 complete listing.  
 5 Q. So in your CV --  
 6 A. Page 2.  
 7 MR. BARNES: Of Exhibit B? Is that what  
 8 you're referring to?  
 9 A. Oh, I'm sorry. Yes. Exhibit B, Page 2.  
 10 BY MR. BOGLE:  
 11 Q. Oh, so not your C -- the litigation  
 12 support exhibit?  
 13 A. The litigation support. I'm sorry.  
 14 Q. Can you start over then, because I lost  
 15 where you were at?  
 16 A. No problem. So if you want to start on --  
 17 let's start on Page --  
 18 Q. Let's do this. Stop there.  
 19 A. Okay.  
 20 Q. Let me repeat the question and we'll start  
 21 over with the question.  
 22 A. Okay. All right.  
 23 Q. That's probably the best way to do this.  
 24 My question was are there any other cases where you

<p style="text-align: right;">Page 78</p> <p>1 submitted an expert report but have not actually  2 offered any sort of testimony?  3 A. And testimony, do you mean by being  4 deposed? I'm not an attorney, so --  5 Q. Any sworn testimony where you were put  6 under oath.  7 A. Okay. Fair enough. So starting on Page  8 1, Concordia versus Lazarus. James Jah versus  9 Glenmark. GlaxoSmithKline versus Glenmark. And I  10 believe that's it.  11 Q. So going then back to the listing in  12 Exhibit B of cases there, the J &amp; J talcum powder  13 litigation -- what are the nature of the opinions  14 you're offering in that case?  15 A. It's around a retailer's standard  16 processes regarding testing of branded OTC products.  17 Q. And what company are you testifying on  18 behalf of?  19 A. It is in gen -- it will be different  20 companies, but it will generally be retailers and  21 distributors of the OTC products.  22 Q. And it looks like Barnes &amp; Thornburg is  23 the firm that retained you there?  24 A. Correct.</p>	<p style="text-align: right;">Page 80</p> <p>1 and whether or not a pharmacy can adequately track all  2 the way through the supply chain where the product came  3 from.  4 Q. And who were you testifying for in that  5 case?  6 A. On behalf of Heartland Medical.  7 Q. And are you offering any opinions that  8 Heartland Medical acted inappropriately in any way in  9 that case?  10 A. No.  11 Q. And how much have you been paid for that  12 case so far?  13 A. I don't know. Sitting here today, I don't  14 know.  15 Q. More than \$50,000?  16 A. No.  17 Q. More than \$20,000?  18 A. No.  19 Q. You have no approximation other than not  20 more than \$20,000?  21 A. It's -- it was a small engagement. That's  22 what I can tell you. I would have to go back and look  23 at the invoices to understand.  24 Q. The Concordia Pharmaceuticals, Inc.,</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Are you offering any opinions in that case  2 that the retailers acted inappropriately in any  3 fashion?  4 A. No.  5 Q. And how much approximately have you been  6 paid for your work in that case?  7 A. Well, it's a number of different cases,  8 and --  9 Q. That litigation, then. Let me rephrase  10 it.  11 A. I --  12 Q. How much have you been paid to date for  13 your work in that litigation -- the J &amp; J talcum powder  14 litigation?  15 A. Roughly \$7,000 or \$8,000.  16 Q. That case is still pending; right?  17 A. Oh, it's multiple cases.  18 Q. Those cases are still pending; right?  19 A. Some of them I believe have been settled  20 or canceled or -- some of them are pending.  21 Q. Going then to the Heartland Medical LLC  22 versus Express Scripts case -- what are the nature of  23 the opinions you're offering in that case?  24 A. It was around diabetic testing supplies</p>	<p style="text-align: right;">Page 81</p> <p>1 versus Lazarus case -- what are the nature of the  2 opinions you're offering there?  3 A. It's around pharmacy practice regarding  4 DESI drugs, the buying practices -- the general buying  5 practices of retailers and drug substitution.  6 Q. Which company are you testifying for  7 there?  8 A. On behalf of Lazarus.  9 Q. Are you testifying in that case that  10 Lazarus acted inappropriately in any way?  11 A. No.  12 Q. And how much have you been paid for your  13 work in that case?  14 A. Again, I'd have to go back and pull the  15 invoices. Less than 20.  16 Q. The Valeant versus ECI and Virtus  17 Pharmaceuticals case -- what are the nature of the  18 opinions you're offering there?  19 A. It will be pharmacy practice, buying --  20 the buying practices, procurement and supply chain and  21 drug substitution regarding DESI drugs.  22 Q. When you say DESI drugs, what does that  23 mean?  24 A. It's a different kind of drug that doesn't</p>

<p style="text-align: right;">Page 82</p> <p>1 necessarily have an NDA, and so when the generic comes</p> <p>2 to market, the ability for a pharmacist to substitute</p> <p>3 isn't -- doesn't follow the normal pathway.</p> <p>4 Q. And in that case, the Valeant</p> <p>5 Pharmaceuticals versus ECI and Virtus case, who are you</p> <p>6 testifying on behalf of?</p> <p>7 A. On behalf of ECI Pharmaceuticals and</p> <p>8 Virtus Pharmaceuticals.</p> <p>9 Q. Are you testifying in that case that</p> <p>10 either of those companies acted inappropriately in any</p> <p>11 way?</p> <p>12 A. No.</p> <p>13 Q. And how much have you been paid for your</p> <p>14 work in that case?</p> <p>15 A. This one I don't recall.</p> <p>16 Q. At all?</p> <p>17 A. I am -- I would be uncomfortable giving</p> <p>18 you a number.</p> <p>19 Q. The James Jah versus Glenmark Generics and</p> <p>20 others case there -- what are the nature of the</p> <p>21 opinions you're offering there?</p> <p>22 A. This was around the requirement of a</p> <p>23 pharmacist to counsel or warn a patient about a side</p> <p>24 effect.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. And how much have you been paid for your</p> <p>2 work in that case?</p> <p>3 A. I don't know. I didn't review those</p> <p>4 invoices.</p> <p>5 Q. Do you have any approximation at all?</p> <p>6 A. I don't.</p> <p>7 Q. Concordia Pharmaceuticals versus Winder</p> <p>8 Labs and Steve Pressman. What are the nature of the</p> <p>9 opinions you're offering there?</p> <p>10 A. It's around pharmacy practices, typical</p> <p>11 buying and supply chain distribution, and drug</p> <p>12 substitution.</p> <p>13 Q. Who are you testifying for?</p> <p>14 A. On behalf of Winder Labs and Steven</p> <p>15 Pressman.</p> <p>16 Q. Have you offered any opinions that either</p> <p>17 of those -- or that company or individual acted</p> <p>18 inappropriately in any way?</p> <p>19 A. No.</p> <p>20 Q. How much have you been paid for your work</p> <p>21 in that case?</p> <p>22 A. I don't recall.</p> <p>23 Q. GlaxoSmithKline versus Teva. What are the</p> <p>24 name of the opinions you were offering in that case?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. What was the side effect?</p> <p>2 A. This particular individual had a severe</p> <p>3 allergic reaction to a drug.</p> <p>4 Q. And who are you testifying for in that</p> <p>5 case?</p> <p>6 A. It was AmerisourceBergen.</p> <p>7 Q. And are you testifying in that case that</p> <p>8 AmerisourceBergen did anything inappropriately?</p> <p>9 A. No.</p> <p>10 Q. How much have you been paid for your work</p> <p>11 in that case?</p> <p>12 A. Less than \$10,000.</p> <p>13 Q. Takeda Pharmaceuticals versus West-Ward</p> <p>14 and Hikma -- what are the nature of the opinions you're</p> <p>15 offering there?</p> <p>16 A. It's all around pharmacy practice, drug</p> <p>17 substitution, and the typical buying practices of</p> <p>18 retail pharmacies.</p> <p>19 Q. Who were you testifying for there?</p> <p>20 A. On behalf of West-Ward and Hikma.</p> <p>21 Q. Are you testifying or have you testified</p> <p>22 that either of those companies acted inappropriately in</p> <p>23 any way?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Pharmacy practice, drug substitution, and</p> <p>2 typical buying and purchasing patterns of pharmacy and</p> <p>3 drug supply chain.</p> <p>4 Q. Who were you testifying for there?</p> <p>5 A. On behalf of Teva Pharmaceuticals.</p> <p>6 Q. Have you testified or will you testify</p> <p>7 that Teva acted inappropriately in any way?</p> <p>8 A. No.</p> <p>9 Q. How much have you paid -- how much have</p> <p>10 you been paid for your work on that case?</p> <p>11 A. I don't recall.</p> <p>12 Q. Any approximation?</p> <p>13 A. No.</p> <p>14 Q. GlaxoSmithKline versus Glenmark. What are</p> <p>15 the nature of the opinions in that case?</p> <p>16 A. Pharmacy practice, drug substitution,</p> <p>17 supply chain management, typical buying practices.</p> <p>18 Q. Who were you testifying for there?</p> <p>19 A. Glenmark Pharmaceuticals.</p> <p>20 Q. Are you testifying or have you testified</p> <p>21 that Glenmark has acted inappropriately in any way?</p> <p>22 A. No.</p> <p>23 Q. How much have you been paid for your work</p> <p>24 in that case?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. I don't recall.</p> <p>2 Q. Amneal Pharmaceuticals versus</p> <p>3 Reckitt Benckiser Pharmaceuticals and Idivior --</p> <p>4 Idivior. I probably said that wrong. What are the</p> <p>5 nature of the opinions you're offering there?</p> <p>6 A. Was around drug substitution and typical</p> <p>7 buying practices, supply chain and distribution.</p> <p>8 Q. Who were you testifying for in that case?</p> <p>9 A. Amneal.</p> <p>10 Q. And did you testify or have you testified</p> <p>11 that Amneal acted inappropriately in any way?</p> <p>12 A. No.</p> <p>13 Q. How much have you been paid for your work</p> <p>14 in that case?</p> <p>15 A. I don't recall, but it was less -- it was</p> <p>16 minimal.</p> <p>17 Q. And what do you mean by minimal?</p> <p>18 A. I don't recall.</p> <p>19 Q. And then there's another entry for</p> <p>20 Concordia Pharmaceuticals versus Winder Labs and Steven</p> <p>21 Pressman. Is that a different case than -- it looks</p> <p>22 like the same case number as the one we just looked at</p> <p>23 a few cases ago.</p> <p>24 A. It's the same case, but there's a</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And who were you working for there?</p> <p>2 A. Reckitt Benckiser.</p> <p>3 Q. And what do they do?</p> <p>4 A. They're a manufacturer.</p> <p>5 Q. And did you testify that Reckitt Benckiser</p> <p>6 did anything inappropriate?</p> <p>7 A. Again, I did an analysis, so it wasn't --</p> <p>8 I wasn't really rendering an opinion other than to give</p> <p>9 them an analysis.</p> <p>10 Q. Did your analysis reach any conclusions</p> <p>11 that they had acted inappropriately in any way?</p> <p>12 A. No.</p> <p>13 Q. How much were you paid for your work in</p> <p>14 that case?</p> <p>15 A. I don't recall.</p> <p>16 Q. Have you ever testified before Congress?</p> <p>17 A. No.</p> <p>18 Q. Have you ever testified before a grand</p> <p>19 jury?</p> <p>20 A. No.</p> <p>21 Q. Have you ever given a sworn statement or</p> <p>22 sworn testimony to the FDA?</p> <p>23 A. No.</p> <p>24 Q. Have you ever given a sworn statement or</p>
<p style="text-align: right;">Page 87</p> <p>1 counterclaim.</p> <p>2 Q. Did you provide more than one report in</p> <p>3 that case?</p> <p>4 A. I have, yes.</p> <p>5 Q. So as to this report for the 2016 injury</p> <p>6 you've got here, what are the nature of the opinions</p> <p>7 you're offering there?</p> <p>8 A. Pharmacy practice, drug substitution, and</p> <p>9 the typical ordering practices for a supply chain and</p> <p>10 distribution.</p> <p>11 Q. And I assume, but I want to be sure --</p> <p>12 you're working for Winder Labs and Steven Pressman</p> <p>13 there again?</p> <p>14 A. Yes.</p> <p>15 Q. And have you testified or will you testify</p> <p>16 they acted inappropriately in any way?</p> <p>17 A. No.</p> <p>18 Q. And the last one you have listed here is</p> <p>19 on the next page, URL Pharma, Inc., versus Reckitt</p> <p>20 Benckiser, Inc. What are the nature of the opinions</p> <p>21 you're offering there?</p> <p>22 A. I did some analysis. It wasn't -- I did</p> <p>23 some analysis for them regarding typical substitution</p> <p>24 when a new generic comes to market.</p>	<p style="text-align: right;">Page 89</p> <p>1 sworn testimony to the DEA?</p> <p>2 A. No.</p> <p>3 Q. Have you ever given a sworn statement or</p> <p>4 sworn testimony to the CDC?</p> <p>5 A. No.</p> <p>6 Q. Have you ever given a sworn statement or</p> <p>7 sworn testimony to any regulatory body?</p> <p>8 A. Not that I can recall.</p> <p>9 Q. And I understand from your report that you</p> <p>10 reviewed the Controlled Substances Act as part of your</p> <p>11 work in this case; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Had you reviewed that act in its entirety</p> <p>14 prior to your work in this litigation?</p> <p>15 A. At some point in time in my training and</p> <p>16 education, I believe I have.</p> <p>17 Q. Where at? Training and education for what</p> <p>18 company?</p> <p>19 A. Well, no, I would say training and</p> <p>20 education as a pharmacist, that we would have studied</p> <p>21 the Controlled Substances Act -- definitely pieces of</p> <p>22 it -- in pharmacy school, and then I'm sure I reviewed</p> <p>23 it at some point in time during my time at Walmart in</p> <p>24 the various positions that I held.</p>



<p style="text-align: right;">Page 90</p> <p>1 Q. Do you recall how long it had been since</p> <p>2 you had reviewed it prior to your work in this case?</p> <p>3 A. No.</p> <p>4 Q. Can you go to Page 47 of your expert</p> <p>5 report, the amended version?</p> <p>6 You say there in Paragraph 137 the DEA is</p> <p>7 overly ambiguous on what a suspicious order monitoring,</p> <p>8 SOM, system entails and does not approve or otherwise</p> <p>9 endorse any specific system for reporting suspicious</p> <p>10 orders, accepting both manual and technology enabled</p> <p>11 programs for the safety of controlled substances as</p> <p>12 long as the policies and procedures meet the</p> <p>13 regulations.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What did you mean here by overly ambiguous</p> <p>17 in this regard?</p> <p>18 A. Well, in my opinion, the DEA does not</p> <p>19 specify specifically what a distributor needs to do as</p> <p>20 part of the suspicious order monitoring system. They</p> <p>21 specifically are purposely ambiguous, saying that each</p> <p>22 organization needs to design and develop a system that</p> <p>23 is consistent with and specific to their type of</p> <p>24 business.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes. Thank you.</p> <p>2 Q. Yeah. Looked like you were still</p> <p>3 thinking; I just wanted to be sure.</p> <p>4 So the next paragraph, Paragraph 138, you</p> <p>5 say Giant Eagle complies with all regulations and</p> <p>6 actively maintains a complex SOM system of integrated</p> <p>7 controls that has been part of their standard operating</p> <p>8 procedures for decades.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So when you reference, just so I'm clear,</p> <p>12 Giant Eagle here, are you talking about them as one and</p> <p>13 the same with HBC or different in this paragraph?</p> <p>14 A. I'm representing Giant Eagle as an entity</p> <p>15 when I speak to their SOM system.</p> <p>16 Q. Okay. Let me ask it a little different</p> <p>17 way to make sure we're clear. The statement I just</p> <p>18 read from Paragraph 138, are you meaning that to</p> <p>19 include the SOM systems over time for HBC?</p> <p>20 A. Yes, I'm including those systems as well.</p> <p>21 Q. So when you referenced standard operating</p> <p>22 procedures here, which standard operating procedures</p> <p>23 are you referring to? Is there somewhere you could</p> <p>24 point me to what you looked at?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Do you intend to testify the DEA has a</p> <p>2 duty to be more specific in this regard?</p> <p>3 A. No.</p> <p>4 Q. Do you think the DEA has acted</p> <p>5 inappropriately in not providing more detail in this</p> <p>6 regard?</p> <p>7 A. No. No.</p> <p>8 Q. And would you agree that as to the</p> <p>9 construct of a suspicious order monitoring program for</p> <p>10 each individual company, that that company is in a</p> <p>11 better position to determine what type of program works</p> <p>12 for them than the DEA is?</p> <p>13 MS. FUMERTON: Objection. Form.</p> <p>14 A. I don't know -- I think it is smart of the</p> <p>15 DEA to understand that everybody's business is</p> <p>16 different, and that it's also smart of the DEA to be --</p> <p>17 not specifically clarify, because technology changes,</p> <p>18 business policies and programs change.</p> <p>19 And so I respect the fact that they're not</p> <p>20 specific, they are overly ambiguous, so that companies</p> <p>21 can design programs that specifically match their type</p> <p>22 of business, size, market.</p> <p>23 BY MR. BOGLE:</p> <p>24 Q. Okay. Are you done?</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Well, within Giant Eagle again. Their SOM</p> <p>2 system as they define it is integrated controls that</p> <p>3 includes the pharmacy, the distributor, as well as</p> <p>4 their corporate office.</p> <p>5 So their policies and procedures to</p> <p>6 prevent theft and diversion are all of the operational</p> <p>7 activities that occur within those three entities, or I</p> <p>8 should say within the one entity but within those three</p> <p>9 distinct groups.</p> <p>10 Q. So in formulating the statement you wrote</p> <p>11 in Paragraph 138 here, did you review any specific</p> <p>12 standard operating procedures?</p> <p>13 A. I reviewed sworn testimony and I looked at</p> <p>14 exhibits -- and along with that and my knowledge of</p> <p>15 pharmacy practice and the laws that govern pharmacy and</p> <p>16 pharmacists and state boards of pharmacy. So it's all</p> <p>17 included.</p> <p>18 Q. Yeah, so I'm just trying to figure out</p> <p>19 what specific procedures you looked at. So am I safe</p> <p>20 to take from that answer that any specific standard</p> <p>21 operating procedures that you reviewed -- when I mean</p> <p>22 specific, specific to Giant Eagle or HBC -- would be</p> <p>23 located in the deposition transcripts in your reliance</p> <p>24 materials or the exhibits thereto?</p>

<p style="text-align: right;">Page 94</p> <p>1 A. The things specifics to Giant Eagle, yes.</p> <p>2 Q. Are any of the standard operating</p> <p>3 procedures you reviewed for Giant Eagle or HBC specific</p> <p>4 to compliance with the Controlled Substances Act?</p> <p>5 A. There is information in the depositions,</p> <p>6 yes.</p> <p>7 Q. When you say information, are you</p> <p>8 referring to specific standard operating procedures?</p> <p>9 A. I mean, I get -- there's -- and I</p> <p>10 apologize if I'm confused, but as people are speaking</p> <p>11 to the different policies and procedures, some of them</p> <p>12 are written, some of them are unwritten. It just goes</p> <p>13 towards their general practices that all combine to</p> <p>14 make up their suspicious order monitoring system.</p> <p>15 Q. At what point in time did HBC first have a</p> <p>16 written policy concerning compliance with the</p> <p>17 Controlled Substances Act?</p> <p>18 A. I don't recall. I don't know. I know</p> <p>19 there is a date -- I believe -- there's a date that's</p> <p>20 been thrown out there, the first piece of paper that</p> <p>21 they were able to find with regards to discovery, but</p> <p>22 that these operational procedures existed long before</p> <p>23 then.</p> <p>24 Q. In written form?</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. BARNES: Asked and answered also.</p> <p>2 A. Again, I don't believe that when there's</p> <p>3 sworn testimony that 99.9 percent of prescriptions are</p> <p>4 written legit -- for legitimate reasons and dispensed</p> <p>5 appropriately, I don't believe the remaining has</p> <p>6 contributed to the opioid crisis.</p> <p>7 BY MR. BOGLE:</p> <p>8 Q. You referenced 99.9 percent of</p> <p>9 prescriptions being legitimate. Have you seen any sort</p> <p>10 of underlying data or statistical analysis to support</p> <p>11 that finding?</p> <p>12 A. No, it was as part of the sworn testimony</p> <p>13 of high-ranking individuals within the U.S.</p> <p>14 Q. Okay, but have you seen any actual data to</p> <p>15 support that?</p> <p>16 A. Not directly, no.</p> <p>17 Q. Are you aware of any data indirectly to</p> <p>18 support that?</p> <p>19 A. Well, I'm sure he has some information. I</p> <p>20 mean, if they're saying it, I'm certain he has some</p> <p>21 information to back it up.</p> <p>22 Q. Have you seen anything in the public</p> <p>23 sphere or any private documents that you reviewed that</p> <p>24 show that that data is accurate?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. We don't know. I know that as part of</p> <p>2 discovery, which was what came out in the testimony,</p> <p>3 that as part of discovery they were only able to find</p> <p>4 beginning on a certain date, but that people have</p> <p>5 testified that these operational procedures existed</p> <p>6 long before then.</p> <p>7 Q. Have you been able to find any written</p> <p>8 standard operating procedures related to Controlled</p> <p>9 Substances Act compliance other than what was discussed</p> <p>10 in the depositions?</p> <p>11 A. I only reviewed what was in the</p> <p>12 depositions.</p> <p>13 Q. Do you agree there's an ongoing opioid</p> <p>14 epidemic in this country?</p> <p>15 A. I would agree that, yes.</p> <p>16 Q. And do you agree that opioid diversion is</p> <p>17 a cause of that epidemic?</p> <p>18 A. The opioid epidemic is -- it has a number</p> <p>19 of components associated with it. I don't believe that</p> <p>20 it stems from the closed-loop controlled system of</p> <p>21 legitimate prescriptions.</p> <p>22 Q. Do you think that opioid diversion is a</p> <p>23 cause of the epidemic?</p> <p>24 MS. FUMERTON: Object to form.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Again, I'm relying on other people within</p> <p>2 the industry, other respectable and credible</p> <p>3 individuals within the industry, to relay that</p> <p>4 information accurately.</p> <p>5 Q. Okay, but you're not aware of any data</p> <p>6 that supports that yourself?</p> <p>7 A. Again, I believe that these individuals</p> <p>8 that are speaking and testifying in court and using</p> <p>9 this information have data to back up their statements.</p> <p>10 Q. Okay, but I don't think that's what I</p> <p>11 asked you. I'm asking if you're aware of any data that</p> <p>12 supports the statement.</p> <p>13 A. I myself have not seen any data. I rely</p> <p>14 on the fact that they are using data to support their</p> <p>15 statements.</p> <p>16 Q. Let's take a look at your CV real quick,</p> <p>17 in the amended report, which I think is Exhibit A to</p> <p>18 the report.</p> <p>19 Is this a CV that you prepared yourself?</p> <p>20 A. Yes.</p> <p>21 Q. When did you prepare it or last update it?</p> <p>22 A. Probably, well, March. March or April of</p> <p>23 this year.</p> <p>24 Q. Is this the same CV that you use for</p>

<p style="text-align: right;">Page 98</p> <p>1 non-litigation work?</p> <p>2 A. Yes.</p> <p>3 Q. Has the DEA ever retained you to assist it</p> <p>4 in evaluating any issue?</p> <p>5 A. No.</p> <p>6 Q. Has the FDA ever retained you to assist it</p> <p>7 in evaluating any issue?</p> <p>8 A. No.</p> <p>9 Q. Has any other regulatory body hired you to</p> <p>10 evaluate it in assisting (sic) any issue?</p> <p>11 A. No.</p> <p>12 Q. Are you a member of any professional</p> <p>13 organizations currently?</p> <p>14 A. Yes.</p> <p>15 Q. Which ones?</p> <p>16 A. The American Society of Pharmacy Law, the</p> <p>17 American Pharmacists Association, the Arkansas Pharmacy</p> <p>18 Association, and the American Society of Healthcare</p> <p>19 Professionals, I believe it is, and the Healthcare</p> <p>20 Businesswomen's Association.</p> <p>21 Q. Are there any other professional</p> <p>22 organizations you've been a member of in the last five</p> <p>23 years that you're not presently a member of?</p> <p>24 A. I don't believe so.</p>	<p style="text-align: right;">Page 100</p> <p>1 including exhibits therein.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And did you specifically select these</p> <p>5 experts to review -- expert reports to review?</p> <p>6 A. No.</p> <p>7 Q. How did you come to get these specific</p> <p>8 list of reports?</p> <p>9 A. They were e-mailed to me by counsel.</p> <p>10 Q. So that selection was made by them as far</p> <p>11 as what to send you?</p> <p>12 A. Yes.</p> <p>13 Q. Is the same true for the expert reports</p> <p>14 and depositions that you list in your additional</p> <p>15 documents reviewed, which is Exhibit 5?</p> <p>16 A. Yes.</p> <p>17 Q. And going back to the list in your amended</p> <p>18 exhibit -- or amended expert report, you have</p> <p>19 depositions, including exhibits therein, as well.</p> <p>20 Did you specifically select those</p> <p>21 depositions to review?</p> <p>22 A. No.</p> <p>23 Q. Were those given to you by counsel at</p> <p>24 their choosing?</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Are all of the materials that you relied</p> <p>2 on to form your opinions in this case found in your</p> <p>3 materials considered list and your additional materials</p> <p>4 considered list?</p> <p>5 A. Yes.</p> <p>6 Q. Were you granted access to any document</p> <p>7 databases to do any searches on production documents in</p> <p>8 this case?</p> <p>9 A. No.</p> <p>10 Q. Let's go to Exhibit C of your amended</p> <p>11 report, which is the list of materials reviewed or</p> <p>12 considered. The first section you have there are</p> <p>13 pleadings and materials related to pleadings.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you specifically select these</p> <p>17 pleadings to review?</p> <p>18 A. No.</p> <p>19 Q. Did you ask for any specific pleadings?</p> <p>20 A. No.</p> <p>21 Q. How did you come about getting these</p> <p>22 pleadings, then?</p> <p>23 A. They were e-mailed to me by counsel.</p> <p>24 Q. The next section is expert reports,</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. And for the expert reports and</p> <p>3 depositions, the reference to exhibits -- did you look</p> <p>4 at all the exhibits to both the reports and depositions</p> <p>5 that are cited here?</p> <p>6 A. The ones that -- I would have scanned them</p> <p>7 or looked at them as part of my reading of these</p> <p>8 documents.</p> <p>9 Q. Now, the expert reports, for example,</p> <p>10 listed in your amended report and the additional</p> <p>11 documents considered -- did you review those reports in</p> <p>12 their entirety?</p> <p>13 A. For the most part I did, yes.</p> <p>14 Q. Are there any that stand out to you that</p> <p>15 you did not review in their entirety?</p> <p>16 A. There were times that I just skipped to</p> <p>17 certain sections that I felt were most applicable to</p> <p>18 HBC.</p> <p>19 Q. What sections would you have focused on?</p> <p>20 A. Well, I would have scanned over things</p> <p>21 that related to manufacturers, potentially other</p> <p>22 distributors in the case. So I would skip certain</p> <p>23 sections that didn't necessarily pertain to Giant Eagle</p> <p>24 and HBC.</p>

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<p>1 Q. The depositions that you reviewed in this 2 case -- did you review the depositions in their 3 entirety?</p> <p>4 A. I scanned them, yes.</p> <p>5 Q. When you say scanned them, what do you 6 mean?</p> <p>7 A. Well, for the most part I read them. Did 8 I read them word-for-word? No. Would I skip certain 9 sections? Yes.</p> <p>10 Q. Now, on the expert reports that you list 11 here in your amended expert report -- strike that.</p> <p>12 For the expert reports that you reviewed 13 as part of your amended expert report listing here, do 14 you intend to offer any specific criticisms of those 15 experts outside of what's listed in your report 16 currently?</p> <p>17 A. As of today's date, no, I don't intend 18 outside of what I've already done, but it doesn't mean 19 that I won't later on.</p> <p>20 Q. Do you have any present intention of doing 21 so?</p> <p>22 A. Not at this time.</p> <p>23 Q. And from my review of your report and 24 amended report, the only expert listed here that you</p>	<p>1 that before.</p> <p>2 Q. 30, you said?</p> <p>3 A. Uh-huh. But there aren't many of them 4 that are like that. I would have to -- that's the 5 first one that comes to mind.</p> <p>6 Q. Were these 39 documents here on this 7 list -- were these pulled through your independent 8 research?</p> <p>9 A. Yes.</p> <p>10 Q. We'll just look at a couple of these for 11 example. The Number 4 on your list, article lead 12 author Rosenblum.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Had you read that article prior to your 15 work in this case?</p> <p>16 A. No.</p> <p>17 Q. Did you pull that article yourself, or was 18 it provided to you?</p> <p>19 A. No, I pulled that.</p> <p>20 Q. Number 2, the article lead author Bondell. 21 Had you reviewed that article prior to your work in 22 this case?</p> <p>23 A. No.</p> <p>24 Q. Did you pull that, or was it provided to</p>
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<p>1 provide criticisms of is Craig McCann; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Going back to the materials considered 4 list, you've got websites, articles, and other online 5 materials. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are these materials that you specifically 8 reviewed for your work in this litigation?</p> <p>9 A. Yes.</p> <p>10 Q. Are there any of these materials -- these 11 list of 39 here -- that you had reviewed prior to your 12 work in this case?</p> <p>13 A. Yes.</p> <p>14 Q. Which ones?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know of any of these in this list 17 of 39 that you definitely had not reviewed prior to 18 your work in this case?</p> <p>19 A. So for -- and I don't know that I can give 20 you a complete list without spending time scanning. 21 For example, Number 30 -- I have seen that prior to 22 writing this expert report.</p> <p>23 Q. You said you had seen that?</p> <p>24 A. I have seen it, yes, because I've used</p>	<p>1 you?</p> <p>2 A. I pulled it.</p> <p>3 Q. What process did you use to search for 4 these medical journal articles, like Number 2 and 5 Number 4?</p> <p>6 A. Google.</p> <p>7 Q. Are there any medical journal articles 8 that you reviewed for your work in this case but didn't 9 include on this list?</p> <p>10 A. Yes.</p> <p>11 Q. Is there a reason why you didn't include 12 those on your list?</p> <p>13 A. Because they didn't help in forming my 14 opinions.</p> <p>15 Q. Have you created any demonstrative 16 exhibits that you plan to use at trial, outside of 17 what's contained in your report?</p> <p>18 A. No. Doesn't mean that I won't, but I 19 don't have -- I haven't done it yet.</p> <p>20 MR. BOGLE: Let's take a five-minute 21 restroom break real quick. I'm going to reset, move on 22 to a different subject.</p> <p>23 MR. BARNES: Okay.</p> <p>24 THE VIDEOGRAPHER: We are going off the</p>

<p style="text-align: right;">Page 106</p> <p>1 record at 11:35 AM.</p> <p>2 [A brief recess was taken.]</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record at 11:58 AM.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. Before we broke, I asked you if you had</p> <p>7 created any demonstrative exhibits for trial, and I</p> <p>8 believe you said not at this time. Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Are there any that you plan to create but</p> <p>11 have not started working on yet?</p> <p>12 A. I don't know. I mean, until it gets down</p> <p>13 when we get to trial and we determine what my testimony</p> <p>14 is going to be and whether or not other demonstratives</p> <p>15 are needed, I don't know how to -- I just don't know</p> <p>16 right now.</p> <p>17 Q. Do you intend to testify as to what</p> <p>18 patient populations should appropriately take opioids?</p> <p>19 A. No.</p> <p>20 Q. Let's go back to your amended expert</p> <p>21 report. And I'm on Page 6, please. So I'm under</p> <p>22 summary of expert opinions there.</p> <p>23 And for A, you say as a board licensed</p> <p>24 pharmacist with over 25 years of experience, I find</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Well, it's my years of experience. It's</p> <p>2 the data that shows that it's constantly being</p> <p>3 prescribed. It is the materials that I have reviewed</p> <p>4 and it's referenced to them being in evidence-based</p> <p>5 protocols. I mean, it's a multitude of information</p> <p>6 that points to the fact that these drugs are effective.</p> <p>7 Q. What as far as stuff that you've cited to</p> <p>8 are you talking about that you're referring to on this</p> <p>9 point?</p> <p>10 A. Well, when you think about the World</p> <p>11 Health Organization and their analgesic ladder, when</p> <p>12 you read about the information from other key opinions</p> <p>13 leaders and the testimony in this case speaks to the</p> <p>14 efficacy of these drugs to treat pain.</p> <p>15 Q. The testimony from who?</p> <p>16 A. There are other experts in this case that</p> <p>17 have testified to the effectiveness of these drugs.</p> <p>18 Q. Which ones have you reviewed on that</p> <p>19 point?</p> <p>20 A. I just recently re -- read it on the</p> <p>21 additional documents reviewed. It was either Hughes or</p> <p>22 Dombrowski, and I apologize, I can't recall which</p> <p>23 one.</p> <p>24 Q. So you're relying on either one of those</p>
<p style="text-align: right;">Page 107</p> <p>1 that opioids are effective and essential drugs for pain</p> <p>2 management when used appropriately.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What are you relying on to support that</p> <p>6 conclusion as to the efficacy of opioids?</p> <p>7 A. Well -- first of all, they're safe and</p> <p>8 effective because they were approved by the FDA and</p> <p>9 granted both NDAs and ANDAs. So we know they're safe,</p> <p>10 we know they're effective.</p> <p>11 And given my 25 years of experience as a</p> <p>12 pharmacist, I can vouch for the fact that there are</p> <p>13 thousands and thousands of patients that have taken</p> <p>14 them and they work for them.</p> <p>15 Q. Have you conducted any sort of systematic</p> <p>16 analysis of those patients as to the efficacy they</p> <p>17 received?</p> <p>18 A. No, I don't need to. Again, the drug was</p> <p>19 proven safe and effective by the FDA.</p> <p>20 Q. So as to this opinion here as to opioids</p> <p>21 being effective and essential drugs, outside of your</p> <p>22 experience as a pharmacist that you've just referenced</p> <p>23 and it being approved by the FDA, is there anything</p> <p>24 else you intend to rely on for that statement?</p>	<p style="text-align: right;">Page 109</p> <p>1 two individuals considering the efficacy of the drug as</p> <p>2 well?</p> <p>3 A. It just goes to further supporting my</p> <p>4 opinion. There was lots of information that I reviewed</p> <p>5 that I looked at on the internet that is going to</p> <p>6 support this.</p> <p>7 Q. Like what?</p> <p>8 A. Other articles, things that other</p> <p>9 physicians and key opinion leaders have brought forth.</p> <p>10 Q. Anything outside of what's in your</p> <p>11 materials considered list as far as articles go?</p> <p>12 A. I mean, I looked at -- as I said before, I</p> <p>13 looked at a lot of articles, but they didn't</p> <p>14 necessarily add to or change my opinion.</p> <p>15 Q. But are there any medical journal articles</p> <p>16 you intend to rely on for this point outside of what's</p> <p>17 listed in your materials considered?</p> <p>18 A. Not at this point, no.</p> <p>19 Q. And the WHO analgesic ladder you're</p> <p>20 referring to related to treatment of cancer patients;</p> <p>21 right?</p> <p>22 A. It was originally developed to treat</p> <p>23 cancer patients and then has been supplemented to</p> <p>24 actually work outside work on noncancer pain, and</p>



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1 they've even supplemented it to look at acute pain.  
 2 Q. The WHO has supplemented it?  
 3 A. The other -- no, key opinion leaders have  
 4 supplemented it.  
 5 Q. So the next sentence under A in your  
 6 summary of expert opinions says the vast majority of  
 7 opioid prescriptions are written for legitimate reasons  
 8 and consumed by patients according to prescribers'  
 9 directions without undue or long-lasting harm to the  
 10 patient.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. What are you specifically relying on to  
 14 support that statement?  
 15 A. Again, it's 25 years of experience, my  
 16 training as a pharmacist, the fact that the products  
 17 are approved by the FDA and continue to remain in  
 18 market, opinions of physicians and other key opinion  
 19 leaders in the market, as well as the information  
 20 provided in testimony.  
 21 I believe -- and I don't want to mess up  
 22 his name -- Rannazzisi speaks to the legitimacy of the  
 23 prescriptions and how many prescriptions are actually  
 24 written for legitimate reasons.

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1 Q. So you're citing to the Rannazzisi -- is  
 2 that the Deposition Exhibit 8 you're talking about  
 3 here?  
 4 A. Yes, his information in general. That's  
 5 Exhibit 8. There are other things that I have  
 6 reviewed, but you're asking me -- I've read so much  
 7 material, it's hard for me to specifically point to the  
 8 exact place that I got the information, outside of what  
 9 I've already cited.  
 10 Q. Have you undertaken any quantitative  
 11 analysis as to how many patients legitimately use  
 12 opioids?  
 13 A. I have not, no.  
 14 Q. Have you done any quantitative analysis as  
 15 to how many patients consume opioids according to their  
 16 prescriber's directions?  
 17 A. No.  
 18 Q. Have you done any quantitative analysis as  
 19 to how many patients consume opioids without undue or  
 20 long-lasting harm to themselves?  
 21 A. I haven't done any specific analysis  
 22 because my experience tells me and the number of  
 23 patients that I have treated tells me that these are  
 24 safe, they're effective products, and when they're used

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1 appropriately they will not cause long-lasting harm to  
 2 the patient.  
 3 Q. So for that point you're relying on your  
 4 experience; is that true?  
 5 A. My experience, working as a pharmacist,  
 6 working with physicians, the articles that I have read,  
 7 my training, and the endorsements by the FDA.  
 8 Q. Have you seen any FDA endorsements to the  
 9 point of majority of patients taking opioids do so  
 10 without undue or long-lasting harm?  
 11 A. Well, just the fact that the FDA has  
 12 granted them a new drug application or an abbreviated  
 13 new drug application -- the FDA controls what drugs are  
 14 available in market for sale, and the fact that the FDA  
 15 leaves these products in market signals to all health  
 16 care providers that these products have been proven  
 17 both safe and effective.  
 18 Q. So you're relying on FDA approval for the  
 19 point of the vast majority of patients taking the drugs  
 20 without undue or long-lasting harm? Am I understanding  
 21 you right?  
 22 A. What I'm saying is the fact that the FDA  
 23 approves these products for safety and efficacy means  
 24 that when taken appropriately they are safe. That is

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1 what the FDA is telling the health care community.  
 2 Q. What are the appropriate ways to take  
 3 opioids?  
 4 A. Per your physician's instructions.  
 5 Q. Any other?  
 6 A. Well, I am not a physician, so it is -- as  
 7 a prescriber, you have the relationship with the  
 8 patient to determine their level of pain, their  
 9 tolerance, any side effects, any systemic issues with  
 10 their kidneys and liver.  
 11 So it is the -- the relationship exists  
 12 between the prescriber and the patient to determine  
 13 what is appropriate for them and the amount of pain  
 14 that they are experiencing.  
 15 Q. Under B there, you say patients are  
 16 increasingly aware of the benefits and risks of pain  
 17 medications, including opioids.  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. What are you relying on for that  
 21 statement?  
 22 A. Just general information as a pharmacist,  
 23 the things that you read in the media. There is a lot  
 24 of information now bubbling up about opioids and the

<p style="text-align: right;">Page 114</p> <p>1 terms that have been used between opioid crisis and  2 opioid epidemic.  3 People have -- they're increasingly aware,  4 they're extremely sensitive to these types of drugs,  5 and when they're prescribed they have lots of  6 questions, and we supply them with information.  7 Q. Have you undertaken any formal analysis as  8 to patient awareness on the risks or benefits of  9 opioids?  10 A. No formal analysis, no.  11 Q. Under C there, the second sentence, you  12 say if pain is not resolved or is expected to be  13 moderate to severe intensity, evidence-based treatment  14 protocols recommend opioid/acetaminophen combination  15 products.  16 Do you see that?  17 A. Yes.  18 Q. And you cite to an article by Bondell. Do  19 you see that there?  20 A. Yes.  21 Q. Any other articles you intend to rely on  22 for that point?  23 A. Well, this is also where the World Health  24 Organization's analgesic ladder comes in.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. So is there anything else you intend to  2 rely on for the statement I just read here, that if  3 pain is not resolved or is expected to be moderate to  4 severe intensity, evidence-based treatment protocols  5 recommend opioid/acetaminophen combination products?  6 A. Not at this time.  7 Q. If you can go to the next page, Page 7 of  8 your report. Are you there?  9 A. Uh-huh.  10 Q. Oh, okay. You're already -- I'm looking  11 at F. You say there as part of the prescription  12 filling process, a pharmacist often communicates with  13 prescribers regarding an opioid prescription to discuss  14 the drug, strength, dose, or frequency of utilization  15 for a specific patient.  16 Do you see that?  17 A. Yes.  18 Q. Do you intend to specify -- or strike  19 that.  20 Do you intend to testify specifically  21 about any interaction between anyone at Giant Eagle and  22 any specific patient in this regard?  23 A. No. Wait, let me ask the question again.  24 I mean, I have read testimony that says that they have</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. As to cancer patients?  2 A. Again, it -- yes, it was originally  3 created for cancer patients, but then has been amended  4 or has been widely accepted to be amended to include  5 noncancer patients.  6 Q. What do you rely on to say it's been  7 widely accepted in that regard?  8 A. The fact that it's been published in  9 several different countries that -- and it's part of  10 the article, the review articles that these doctors are  11 referring back to.  12 Q. Do you consider the fact that the WHO  13 hasn't modified the analgesic ladder as being important  14 at all to that opinion?  15 A. I just think that -- can you -- will you  16 ask that question again, please?  17 Q. Sure. Do you consider the fact that the  18 WHO has not modified their own analgesic ladder in the  19 way you're describing as being important or not to that  20 opinion?  21 A. I don't think so. I think a lot of times  22 a protocol is adopted for a particular situation, and  23 then that adoption gets expanded and applied to other  24 situations where -- and it becomes widely acceptable.</p>	<p style="text-align: right;">Page 117</p> <p>1 also done this. So besides me doing it as a pharmacist  2 and recognizing the fact that it is part of our  3 standard practice as a pharmacist, there is testimony  4 from Giant Eagle employees that they also engage in  5 this behavior.  6 Q. Okay. I think my question was specific to  7 whether you intend to testify about any specific  8 interaction between a Giant Eagle pharmacist or other  9 employee and a patient in this regard.  10 A. Not a specific employee or a specific  11 patient, no.  12 Q. If you go to Page 8 of your report. And  13 under G about two-thirds of the way down through G  14 where it says the DEA has left it.  15 A. Uh-huh.  16 Q. Do you see that sentence?  17 A. Yes.  18 Q. It says the DEA has left it substantially  19 to the discretion of each registrant to design and  20 operate its system to comply with the security  21 requirement, and such system must be able to disclose  22 suspicious orders when discovered, and then you cite to  23 the regulation.  24 Do you see that?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. What is your understanding of how long a</p> <p>3 registrant has to report a suspicious order after it's</p> <p>4 discovered?</p> <p>5 A. So the registrant needs to report it</p> <p>6 immediately after it has determined that it is</p> <p>7 suspicious.</p> <p>8 Q. The -- strike that.</p> <p>9 Are you aware of any substantive changes</p> <p>10 to the Controlled Substances Act since 1970?</p> <p>11 A. Not that I can recall, no.</p> <p>12 Q. If you go to H on that same page, you say</p> <p>13 captive self-distributors for prescription products</p> <p>14 fulfill orders that will replenish shelf stock for</p> <p>15 items that have already been dispensed.</p> <p>16 You see that sentence?</p> <p>17 A. Yes.</p> <p>18 Q. What is your understanding of Giant</p> <p>19 Eagle's policy as to when they order opioid products in</p> <p>20 relationship to how much they have left on their shelf?</p> <p>21 A. Ask that question again.</p> <p>22 Q. Yeah. What is your understanding of Giant</p> <p>23 Eagle's policy as to when they order opioid products in</p> <p>24 relationship to how much of that product they have left</p>	<p style="text-align: right;">Page 120</p> <p>1 bottle, you order a bottle.</p> <p>2 Q. And how long has that specific process</p> <p>3 been in place at Giant Eagle?</p> <p>4 A. For years.</p> <p>5 Q. Do you have any more specific --</p> <p>6 A. Several years. Decades.</p> <p>7 Q. Decades? Okay.</p> <p>8 The next sentence, you say therefore</p> <p>9 artificially limiting order quantities, preventing</p> <p>10 shipments, and delaying orders unnecessarily can</p> <p>11 interrupt patient care and cause further harm.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. You would agree that any necessary</p> <p>15 interruption, though, would be appropriate; right?</p> <p>16 MR. BARNES: Objection to form. Vague.</p> <p>17 A. I'm struggling to answer that question</p> <p>18 because a necessary interruption -- could it cause</p> <p>19 patient harm? If you interrupt an order, could it</p> <p>20 cause patient harm? Yes.</p> <p>21 BY MR. BOGLE:</p> <p>22 Q. But would it be necessary to do so if that</p> <p>23 order was suspicious?</p> <p>24 MR. BARNES: Object to form. Vague again.</p>
<p style="text-align: right;">Page 119</p> <p>1 on their shelf?</p> <p>2 A. Well, the way the system works, if that's</p> <p>3 what you're asking me, is -- the process is that when a</p> <p>4 prescription is dispensed, the inventory is</p> <p>5 automatically decremented from their prescription</p> <p>6 management system, and then at the end of the day all</p> <p>7 of the orders are aggregated and that ends up what gets</p> <p>8 ordered then from the distributor.</p> <p>9 Q. And you're talking about Giant Eagle</p> <p>10 specifically?</p> <p>11 A. I'm talking about Giant Eagle</p> <p>12 specifically.</p> <p>13 Q. So for example, if there are 10 bottles of</p> <p>14 opioid acetaminophen combination products that they</p> <p>15 have, they sell one bottle, the next day they would</p> <p>16 replenish with another bottle? Is that what you're</p> <p>17 saying?</p> <p>18 A. More than likely, yes, because it's</p> <p>19 done -- it's an automated process, and they</p> <p>20 determine -- they can do min/max shelf quantities.</p> <p>21 There are different things that they can do within the</p> <p>22 inventory system to hold a certain amount of product on</p> <p>23 the shelf in order to accommodate the fluctuations in</p> <p>24 volume, but in general what happens is you sell a</p>	<p style="text-align: right;">Page 121</p> <p>1 A. If the order is suspicious, one needs to</p> <p>2 determine why it's suspicious and we're going to --</p> <p>3 this definition of suspicious. The -- it needs -- what</p> <p>4 needs to be determined is whether or not if the product</p> <p>5 is released -- anyway, if it's determined that it is</p> <p>6 suspicious, then the order will be stopped.</p> <p>7 BY MR. BOGLE:</p> <p>8 Q. And it necessarily should be; right?</p> <p>9 A. If it is determined to be suspicious, it</p> <p>10 will be stopped.</p> <p>11 Q. And my question was a little different.</p> <p>12 It should be under the Controlled Substances Act;</p> <p>13 right?</p> <p>14 A. Well --</p> <p>15 MS. FUMERTON: Objection. Form. Calls</p> <p>16 for a legal conclusion.</p> <p>17 A. If it's a suspicious order it will be</p> <p>18 stopped. I mean, one -- is it necessary to be stopped?</p> <p>19 Again, as a patient responsibility what I'm going to</p> <p>20 tell you is that if it's suspicious it will be stopped.</p> <p>21 BY MR. BOGLE:</p> <p>22 Q. And just to address the objection and make</p> <p>23 sure I understand it, are you not testifying about what</p> <p>24 the Controlled Substances Act requires as it pertains</p>

<p style="text-align: right;">Page 122</p> <p>1 to suspicious order monitoring? Is that not part of  2 your testimony?</p> <p>3 A. No, I'm speaking -- I am testifying to the  4 suspicious order monitoring system at Giant Eagle.  5 Q. And whether or not that complies with the  6 Controlled Substances Act; right?</p> <p>7 A. Correct.</p> <p>8 Q. On the next page -- I'm looking at I --  9 the second sentence there says recognizing the complex  10 differences to the core organization, Giant Eagle built  11 a pharmacy infrastructure that is separate from its  12 main grocery business in order to focus on patient  13 care, prescription delivery and cost, supply chain,  14 regulatory compliance, training, and other  15 health-related business services.  16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. This separate infrastructure -- what are  19 you relying on to say that that separate pharmacy  20 infrastructure was created for the purpose of -- one of  21 its purposes being regulatory compliance?</p> <p>22 A. Well, based on the testimony that I read  23 and looking at the org charts that I saw, you can  24 determine that they have a separate legal</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. And you're talking about Giant Eagle or  2 HBC specifically here; right?</p> <p>3 A. Yes.</p> <p>4 Q. And what specific parameters are you  5 referring to here that exceed regulatory minimums?</p> <p>6 A. There are different operating policies and  7 procedures that are not required -- they're not  8 required legally. For example, the quantity and the  9 number of times that they do an inventory count, within  10 HBC itself they're actually doing inventory counts five  11 times a day. They do them at the beginning of a shift;  12 they do it at break; they do it at lunch; they do it in  13 the afternoon break, and they do it before they leave.  14 That far exceeds any regulatory parameters.  15 The store level, same thing. They do  16 controlled substance inventory counts specific around  17 opioids doing back counts, monthly narcotic orders,  18 those -- where they're actively looking at the accuracy  19 of their inventory on a much more consistent and  20 constant basis than what the law requires.  21 Q. Any other parameters that you intend to  22 testify about other than what you mentioned here as far  23 as inventory counts?</p> <p>24 A. Those are the ones that come to mind right</p>
<p style="text-align: right;">Page 123</p> <p>1 infrastructure -- or not separate legal -- separate  2 pharmacy infrastructure that is different from their  3 broader business, and they created this infrastructure  4 in order to concentrate on the areas that are  5 different -- that are unique to pharmacy that are  6 different from the rest of their grocery business.  7 Q. What documentary evidence do you intend to  8 rely on to support that this infrastructure was created  9 and one of its purposes for -- is for regulatory  10 compliance. You mentioned org charts. Anything else?</p> <p>11 A. It's what's in the testimony that I read.  12 Q. So testimony, org charts. Anything else?</p> <p>13 A. No.</p> <p>14 Q. Anybody's testimony in specific you're  15 relying on for that point?</p> <p>16 A. I can't recall at this time. It was  17 mentioned several times.  18 Q. Going down to J, the second sentence  19 there, you say because of the heightened sensitivity  20 concerning controlled substances and opioids in  21 particular, additional parameters are engaged that  22 exceed regulatory minimums.  23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 now.  2 Well, I mean, and I can mention -- I mean,  3 as we sit here, I can mention things. Security  4 controls with cameras and guards. They have redundant  5 security between what belongs in the pharmacy,  6 including the box that Giant Eagle sits in.  7 So I mean, it's a repet -- I mean, it goes  8 on and on. It's not just the inventory counts, but as  9 I sit here today, those are the two that come to mind  10 easiest.  11 Q. And these security controls you're  12 referencing -- that's an attempt to prevent theft from  13 the distribution center or the pharmacy itself; right?</p> <p>14 A. It's both. Theft and diversion, yes.  15 Q. Right. So from people, either the  16 employees or somebody coming into a pharmacy taking the  17 medications; right?</p> <p>18 A. That -- yes.  19 Q. Stealing them?</p> <p>20 A. But it's also to ensure that operational  21 procedures are being followed. They're not  22 specifically to look at theft. They're to monitor the  23 entire operations and ensure that they have a closed  24 supply chain and a closed loop of distribution.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. What security controls do you intend to</p> <p>2 testify are specifically aimed at ensuring that</p> <p>3 suspicious orders are properly flagged and blocked?</p> <p>4 MR. BARNES: Just so we're clear, are you</p> <p>5 asking her other than what's in her report, or --</p> <p>6 MR. BOGLE: No, I'm asking generally.</p> <p>7 MR. BARNES: So if you need to refer to</p> <p>8 your report to answer the question, feel free.</p> <p>9 A. Right. So ask your question again.</p> <p>10 BY MR. BOGLE:</p> <p>11 Q. What security controls do you intend to</p> <p>12 testify are specifically aimed at ensuring that</p> <p>13 suspicious orders for opioids are flagged and blocked?</p> <p>14 A. Everything that I've put in my report.</p> <p>15 When you look at GE's different security and the</p> <p>16 different pieces that they have in place when it comes</p> <p>17 to security and the systems that they use, the</p> <p>18 operational procedures they employ, the people that</p> <p>19 they have hired and they employ, it all works together</p> <p>20 as part of their process for suspicious order</p> <p>21 monitoring.</p> <p>22 Q. Is there a specific written policy or</p> <p>23 procedure that you intend to rely on to support the</p> <p>24 notion that -- strike that.</p>	<p style="text-align: right;">Page 128</p> <p>1 exceeded regulatory minimums as it applies to</p> <p>2 suspicious order monitoring for controlled substances.</p> <p>3 A. And I understand you're trying to --</p> <p>4 you're asking me about specific written documentation.</p> <p>5 Q. Right.</p> <p>6 A. And I can't -- I'm not going to rely on</p> <p>7 specific written documentation when I have reviewed all</p> <p>8 of this information and I understand how the process</p> <p>9 works. I'm not going to rely on -- on a vast complex</p> <p>10 program, to rely on a document or a set of documents.</p> <p>11 Q. Is it important to you from your</p> <p>12 perspective for there to be written policies and</p> <p>13 procedures documenting what should be done to detect</p> <p>14 suspicious orders of controlled substances?</p> <p>15 A. So there are certain things that need to</p> <p>16 be put in writing, and as systems have evolved and the</p> <p>17 business acumen has evolved, things that -- policies,</p> <p>18 procedures, typical pharmacy practices have more and</p> <p>19 more been written down.</p> <p>20 Does it all have to be in writing? No, it</p> <p>21 doesn't. It comes from years of training, schooling,</p> <p>22 expertise, and years in the industry to know that these</p> <p>23 policies and procedures and the things that you follow</p> <p>24 all contribute to the prevention of theft and diversion</p>
<p style="text-align: right;">Page 127</p> <p>1 Is there a specific policy or procedure</p> <p>2 that you intend to rely on, written policy or procedure</p> <p>3 you intend to rely on, to support the notion that Giant</p> <p>4 Eagle or HBC exceeds regulatory minimums as it pertains</p> <p>5 to detecting suspicious opioid orders?</p> <p>6 MR. BARNES: Objection. Asked and</p> <p>7 answered several times now.</p> <p>8 A. Again, I don't believe that a single</p> <p>9 policy or a single procedure can adequately describe</p> <p>10 the suspicious order monitoring system that exists at</p> <p>11 Giant Eagle.</p> <p>12 BY MR. BOGLE:</p> <p>13 Q. Is there a set of policies or procedures</p> <p>14 you're relying on in that regard?</p> <p>15 A. It is a -- it's part of the general</p> <p>16 business practices as a pharmacy, as a pharmacist.</p> <p>17 It's -- as I've said in my report, it's a complex</p> <p>18 integrated system that involves the stores, the</p> <p>19 distribution center, and the corporate office.</p> <p>20 Q. Right, and I'm focusing on a specific area</p> <p>21 of that, which is -- are written policies and</p> <p>22 procedures. I'm just trying to ascertain in this</p> <p>23 deposition what written policies or procedures you</p> <p>24 intend to rely on to say that Giant Eagle or HBC has</p>	<p style="text-align: right;">Page 129</p> <p>1 of opioids.</p> <p>2 Q. What aspects of suspicious order</p> <p>3 monitoring programs should be put in writing?</p> <p>4 A. That's up to the organization. I'm not</p> <p>5 going to make that determination of what needs to be in</p> <p>6 writing or not in writing. I'm also not an attorney.</p> <p>7 Q. Has anyone ever asked you or consulted</p> <p>8 with you as to what sort of policies and procedures</p> <p>9 should be put in writing for their company as it</p> <p>10 pertains to suspicious order monitoring?</p> <p>11 A. No.</p> <p>12 Q. You say under K on Page 9, the first</p> <p>13 sentence, Giant Eagle is and always has been compliant</p> <p>14 with the Controlled Substances Act.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. First of all, you say has always been.</p> <p>18 What was your review period for this case? How far</p> <p>19 back did you go to make this assessment?</p> <p>20 A. I have been relying on the testimony of</p> <p>21 the other Giant Eagle employees in this particular</p> <p>22 case, reading their sworn statements and testimony.</p> <p>23 Q. So -- but do you have any time parameters</p> <p>24 in mind based on that? You're saying has always been</p>



<p style="text-align: right;">Page 130</p> <p>1 compliant. Are you saying since 1970, when the  2 Controlled Substances Act was implemented, or some  3 other time? I'm just trying to get a sense of what  4 that means.</p> <p>5 A. Right. So I'm relying on the sworn  6 testimony of other Giant Eagle employees that have said  7 that they are in compliance.</p> <p>8 Q. Did you undertake your own assessment  9 outside of the review of their testimony on that point?</p> <p>10 A. My review would be current and existing,  11 so based on their testimony and what I understand in  12 the industry and through my experience, I have  13 determined that yes, they are currently -- they are in  14 compliance.</p> <p>15 Q. So outside of your review of the  16 deposition testimony and your general experience as a  17 pharmacist, what else are you relying on specifically  18 as to HBC to say that they have always been compliant  19 with the Controlled Substances Act?</p> <p>20 A. Well, you also have to look at the fact  21 that they've been licensed; they are licensed and  22 inspected by the DEA, they are licensed and inspected  23 by the state boards of pharmacies, and by having those  24 licenses, each of those governing boards are consenting</p>	<p style="text-align: right;">Page 132</p> <p>1 I don't even know the word for it, but these are  2 licensing bodies that come in and are telling everybody  3 that these facilities, these pharmacies, the  4 professionals that are working in the pharmacies, are  5 all licensed and have the credibility, the education,  6 the authority. They're meeting all of the licensing  7 requirements, they're following the state laws, they  8 can continue -- they can begin and continue  9 distributing and dispensing these particular products.</p> <p>10 Q. Have you reviewed any audits or  11 inspections by any licensing authority as to HBC?</p> <p>12 A. Personally I have not reviewed, but based  13 on the testimony that I read, I understand that the DEA  14 has not sanctioned HBC for any reason.</p> <p>15 Q. But I just want to make sure I'm  16 understanding. You have not reviewed any actual  17 licensing audits or inspections yourself; true?</p> <p>18 A. That is correct.</p> <p>19 Q. Have you reviewed any internal audits or  20 inspections done by ABC on itself as to its suspicious  21 order monitoring practices?</p> <p>22 A. Done by ABC?</p> <p>23 Q. I should have said HBC. Sorry.</p> <p>24 A. Oh. And I have not --</p>
<p style="text-align: right;">Page 131</p> <p>1 to the fact that they are in compliance and they can  2 continue to dispense such products and they have never  3 been -- they're not -- so they've never been cited by  4 the DEA with any type of deficiency.</p> <p>5 So given the governing boards that govern  6 our practice of pharmacy and the distributors, one can  7 rely on the fact that these government agencies, the  8 licensing boards, are giving them the license to  9 continue practicing and to continue distributing in  10 every store and from the distribution centers.</p> <p>11 Q. So is it your testimony that our jury in  12 this case can rely on the fact that HBC and Giant Eagle  13 have been licensed, and that's enough for them to  14 support a conclusion that they haven't been involved in  15 any diversionary activities?</p> <p>16 A. I believe it's a combination of  17 information, but yes, licensing speaks a lot. We are  18 licensed. They have come in. They have licensed the  19 facility, HBC in specifics. They came in and they do a  20 preinspection, making sure that all the security  21 requirements are being met. They come back in before  22 they even allow them to start distributing. They come  23 back in again after six months.</p> <p>24 These are accredited -- these are state --</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. -- I may have said ABC. I meant HBC.</p> <p>2 A. That's all right. I did not -- I have not  3 reviewed any audits. I am going strictly off of the  4 testimony that says that they have had no deficits.</p> <p>5 Q. So outside of what we've just discussed  6 here, anything else you're relying on for the  7 conclusion that Giant Eagle is and has always been  8 compliant with the Controlled Substances Act?</p> <p>9 A. For now -- that's the answer to my  10 question, or to your question for now, that those are  11 the things that I'm going to be relying on.</p> <p>12 Q. If you can go to Page 10 of your report.  13 I'm looking at Paragraph 18. You say opioids have been  14 regarded for millennia as among the most effective  15 drugs for the treatment of pain.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And then you cite to an article by  19 Rosenblum; right?</p> <p>20 A. Yes.</p> <p>21 Q. Any other articles or documentation you  22 intend to rely on for this point?</p> <p>23 A. No. Other than -- and if I -- I'm going  24 to add to that. Other than the fact, again, that these</p>

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1 are FDA-approved products.  
2 Q. So the fact that they're FDA-approved and  
3 the article you've cited to here. Anything else?  
4 A. For this particular -- no, that is what I  
5 relied upon. And my experience and my training and all  
6 of the other things that we've already spoken of.  
7 Q. From a documentation perspective, though,  
8 anything else?  
9 A. From a documentation perspective, that is  
10 it.  
11 Q. If you can go to Page 14 of your report.  
12 I'm looking at Paragraph 30 that starts on that page.  
13 It says -- let's see. One, two, three -- I think four  
14 sentences in there where it says although the increase.  
15 Do you see that?  
16 A. Uh-huh.  
17 Q. Is that a yes?  
18 A. Yes. I'm sorry.  
19 Q. Although the increase in prescription drug  
20 abuse is likely to be multifactorial, it is likely to  
21 reflect in part changes in available drug formulations  
22 and prescribing practices of opioid medication.  
23 Do you see that?  
24 A. Yes.

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1 Q. What are you specifically relying on from  
2 a documentation perspective to support that statement?  
3 A. The -- it's my general knowledge of the  
4 industry being a pharmacist, my years of training. I  
5 mean, I work with this all the time. Being in the --  
6 working at the oncology clinic and really looking at  
7 opioids and understanding the changes in the  
8 prescriptions that are being filled -- being written,  
9 being filled, and how the prescriptions are changing  
10 due to the different formulations and restrictions by  
11 the insurers and what they're requiring.  
12 Q. Anything from a documentation perspective  
13 you're relying on for this?  
14 MR. BARNES: Object to form. When you say  
15 documentation, are you talking about her whole body of  
16 knowledge and experience, or documentation in this  
17 case?  
18 MR. BOGLE: Well, knowledge and experience  
19 are not documents.  
20 MR. BARNES: Well they can be. You go to  
21 a professional education seminar, you read an outline.  
22 BY MR. BOGLE:  
23 Q. Okay. You got any outlines that you're  
24 relying on from a seminar?

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1 MR. BARNES: That you can remember.  
2 A. I mean, not that I can remember, but  
3 again, this is -- I didn't cite everything. To me  
4 things that are common knowledge or are consistent in  
5 the industry, I didn't feel it necessary to completely  
6 cite every statement in my report, so maybe that's an  
7 error based on an author, but I didn't feel like I  
8 needed to cite every statement I made in my report.  
9 BY MR. BOGLE:  
10 Q. I'm not calling you out. I just have a  
11 right to ask you --  
12 A. Sure.  
13 Q. -- what you're relying on to support  
14 anything that you're saying.  
15 A. And again, I have read and reviewed a  
16 number of articles through all of my training. To me  
17 this is common knowledge that virtually any pharmacist  
18 could tell you, any physician could tell you, that the  
19 prescribing habits of opioids are changing drastically.  
20 Q. Have you seen the rate of addiction to  
21 opioids being one factor in the changing of prescribing  
22 practices?  
23 A. I --  
24 MR. BARNES: Object to form. I don't --

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1 if you know what he means by addiction.  
2 A. And again, there's a lot of discussion  
3 between addiction versus physical dependence. What I  
4 will tell you is that everybody is concerned.  
5 Pharmacists are concerned. Doctors are concerned.  
6 They're changing their prescribing patterns because of  
7 the concern of addiction, of physical dependence, but  
8 also because of diversion and what's happening to these  
9 products once they leave the closed distribution loop  
10 and what happens to the products afterwards.  
11 BY MR. BOGLE:  
12 Q. As a practicing pharmacist, do you  
13 specifically have concerns about the rate of addiction  
14 with opioids as being a reason that they should be  
15 prescribed less?  
16 MR. BARNES: Same objection.  
17 A. And I don't -- I have not seen any  
18 evidence that talks about the quantity or the number of  
19 prescriptions related -- and how that can cause  
20 addiction. It's not necessarily quantified. Yes,  
21 what's quantified is the number of people that have  
22 died, have moved into heroin, have done other things  
23 with the illicit opioids that are on the market.  
24 But in general, the information that I

<p style="text-align: right;">Page 138</p> <p>1 have seen and the data that I have reviewed and seen  2 talks about the fact that the deaths and the opioid  3 epidemic aren't necessarily caused by prescription  4 opioids that are taken according to prescriber  5 direction.  6 BY MR. BOGLE:  7 Q. Do you intend to testify that opioids do  8 not pose the risk of addiction?  9 A. No. The FDA, by classifying most opioids  10 as either a III or a II, as a controlled substance III  11 or II, have blatantly come out and said that there is a  12 risk of abuse and addiction.  13 Q. Do you believe at all times that opioids  14 have been on the market and available for public  15 consumption, that patients should be aware that opioids  16 pose a risk of addiction?  17 MR. BARNES: Objection. Way beyond the  18 scope of her report. What time period are you talking  19 about?  20 MR. BOGLE: I think I said at all times  21 opioids have been on the market.  22 MR. BARNES: At all times opioids have  23 been on the market. Do you know what time period he's  24 referring to?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. So do you intend to testify that the  2 average patient just by way of the fact that it's a  3 controlled substance should know that it's addictive?  4 MR. BARNES: Object to form. Vague. I  5 don't know what you mean by average, but --  6 A. And I don't know if they should know.  7 There is a growing -- they will know, and they're going  8 to -- as they take it, they're going to be made aware  9 of it.  10 BY MR. BOGLE:  11 Q. Should they know that before they become  12 addicted to them?  13 MR. BARNES: Same objection.  14 A. Again, it's not a matter of addiction.  15 You asked me whether or not the patient should know --  16 would they know that they're taking it, not necessarily  17 are they addicted to it.  18 BY MR. BOGLE:  19 Q. No, I asked you whether they should know  20 that it poses a risk of addiction.  21 MR. BARNES: Same objection. Beyond the  22 scope of her report.  23 A. Again, it's not my -- I'm not here to talk  24 about addiction and physical dependence.</p>
<p style="text-align: right;">Page 139</p> <p>1 A. I don't. What I will tell you that as a  2 pharmacist, from 1990 until present we have had an  3 obligation to consult with patients and to speak to  4 them about their medication and to ensure that they're  5 knowledgeable and aware of what the products are and  6 what risks they pose.  7 BY MR. BOGLE:  8 Q. My question was, do you believe at all  9 times that opioids have been on the market and  10 available for public consumption, that patients should  11 be made aware that opioids pose a risk of addiction?  12 MS. FUMERTON: Object to form.  13 MR. BARNES: Yeah, same objection to form.  14 Also, it sounds like you're asking for a legal  15 analysis.  16 MR. BOGLE: I'm not.  17 BY MR. BOGLE:  18 Q. Go ahead.  19 A. Well, and I can speak to as long as I've  20 been in practice, and the fact that the FDA has come  21 out and said that these are controlled substances and  22 by the nature of them being controlled substances they  23 have potential for abuse is the information that is  24 readily available to anybody.</p>	<p style="text-align: right;">Page 141</p> <p>1 BY MR. BOGLE:  2 Q. If you go to Page 21 of your report. On  3 Paragraph 53, you say Giant Eagle Pharmacy experienced  4 rapid growth beginning in 2008 and peaking in 2012  5 after new store growth slowed.  6 Do you see that?  7 A. Yes.  8 Q. What prompted the rapid growth beginning  9 in 2008 for Giant Eagle?  10 A. It was -- they were building new stores.  11 Q. What -- or if you know, what prompted the  12 need for these new stores?  13 A. Well, it's just growth of the general  14 business, so they're growing their business, they're  15 growing the company in total. So when you build a new  16 store typically there's a pharmacy that's going to be  17 located within that particular store. So as they had  18 growth. There was also an extreme amount of growth in  19 overall prescriptions within the entire industry during  20 that time period.  21 Q. But companies grow for a reason, and I'm  22 asking you do you know why Giant Eagle Pharmacies grew  23 beginning in 2008? I understand that they did grow. I  24 got that from your report. I'm asking you why. Do you</p>

<p style="text-align: right;">Page 142</p> <p>1 know why?</p> <p>2 MR. BARNES: Asked and answered.</p> <p>3 A. Because they had more customers coming to</p> <p>4 them.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. Do you know if the growth was specific to</p> <p>7 any drug or class of drugs?</p> <p>8 A. I know that they grew more rapidly in</p> <p>9 their non-controlled substances than they did in their</p> <p>10 controlled substances.</p> <p>11 Q. Based on what? What did you look at to</p> <p>12 determine that?</p> <p>13 A. When we looked at the data, and I actually</p> <p>14 have some reports that speak to that.</p> <p>15 Q. Specific to Summit and Cuyahoga County?</p> <p>16 A. Specific to Summit and Cuyahoga County.</p> <p>17 Q. Can you point me to which ones show the</p> <p>18 growth -- the disproportionate growth for Summit and</p> <p>19 Cuyahoga County, non-controlled versus controlled?</p> <p>20 A. Well, you can look at over those years.</p> <p>21 So for example -- where's the spot? So just as an</p> <p>22 example, if you look at Exhibit M.</p> <p>23 Q. Okay.</p> <p>24 A. You'll see four stores that experienced</p>	<p style="text-align: right;">Page 144</p> <p>1 rely -- that's how I got to that conclusion. Those are</p> <p>2 two examples.</p> <p>3 Q. Have you done any specific assessment for</p> <p>4 any Summit or Cuyahoga County pharmacies as to the rate</p> <p>5 of growth of non-controlled substances versus the rate</p> <p>6 of growth for opioid sales?</p> <p>7 A. If you look at Exhibit -- I think it's I.</p> <p>8 MR. BARNES: I have it in color if you</p> <p>9 want.</p> <p>10 A. Oh, that wasn't the one I was thinking of.</p> <p>11 I was thinking of the ones that are specific to the</p> <p>12 opioids and the at-issue drugs.</p> <p>13 So specifically, yeah, if you look at</p> <p>14 Exhibit J, this is a specific comparison of all of the</p> <p>15 opioids -- the three opioids that appear in Giant</p> <p>16 Eagle's top 100 drugs as determined by IMS, and you can</p> <p>17 see -- now, this is a market share comparison, but you</p> <p>18 can see their comparison, that they under-index -- when</p> <p>19 you look at their non-controlled substances they</p> <p>20 actually under-index in these at-issue substances.</p> <p>21 BY MR. BOGLE:</p> <p>22 Q. And this is looking at Giant Eagle stores</p> <p>23 across the board, right, not for any specific county or</p> <p>24 city or geographic region?</p>
<p style="text-align: right;">Page 143</p> <p>1 prescription growth ranging from 21 to 34 percent for</p> <p>2 overall prescriptions and yet their controlled</p> <p>3 substances only increased somewhere in the neighborhood</p> <p>4 of seven to 12, or didn't -- I'm sorry. Not between</p> <p>5 seven and 12, but that their relationship of controlled</p> <p>6 substances to regular controlled substances stayed</p> <p>7 fairly flat.</p> <p>8 Q. Did you run any assessment like this for</p> <p>9 opioids specifically?</p> <p>10 A. I did not for opioids specifically. This</p> <p>11 is strictly on controlled substances.</p> <p>12 Q. Any other exhibits that you intend to rely</p> <p>13 on here for the point specific to Summit and Cuyahoga</p> <p>14 County -- there was disproportionate growth of controls</p> <p>15 versus non-controls?</p> <p>16 A. Well, I mean, there's -- I've got</p> <p>17 another -- there's another exhibit here on Barberton,</p> <p>18 and when you look at, say, Exhibit Q, and you can see</p> <p>19 Barberton in general, you can see growth in their total</p> <p>20 prescriptions, whereas their non -- or their controlled</p> <p>21 prescriptions actually are flat to declining.</p> <p>22 Q. Okay. Any others?</p> <p>23 A. I mean, there are other conclusions that I</p> <p>24 can draw based on these exhibits, but that's how I</p>	<p style="text-align: right;">Page 145</p> <p>1 A. That is correct. This is much -- this is</p> <p>2 broader, yes.</p> <p>3 Q. And the top 100 prescription drugs listed</p> <p>4 here -- who came up with that list?</p> <p>5 A. IMS.</p> <p>6 Q. Where'd you get the IMS data?</p> <p>7 A. This particular data came as part of the</p> <p>8 discovery. It just came up as part of the discovery.</p> <p>9 IMS data what I'm used to using for evaluation of</p> <p>10 market share, so this is the drug data -- or not the</p> <p>11 drug. This is the database that I'm used to using and</p> <p>12 so this is the information that was brought up as part</p> <p>13 of discovery.</p> <p>14 Q. So under Note 2 here in Exhibit J you list</p> <p>15 four specific opioid products that were assessed;</p> <p>16 right?</p> <p>17 A. It's three.</p> <p>18 Q. Yeah, I'm sorry. I'm sorry, no, it's --</p> <p>19 okay. Am I reading this wrong? You say HYCD/APAP.</p> <p>20 That's one?</p> <p>21 A. One.</p> <p>22 Q. Oxycodone/APAP. That's two; right?</p> <p>23 A. Correct.</p> <p>24 Q. Oxycodone/HCL. That's three; right?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. Correct.</p> <p>2 Q. Four is APAP/CD; right?</p> <p>3 A. Oh, you have the ol -- you don't have the</p> <p>4 amended.</p> <p>5 Q. Oh, I do. I'm sorry. I'm looking at the</p> <p>6 wrong one.</p> <p>7 A. That's okay.</p> <p>8 Q. All right. Let me start that over then.</p> <p>9 A. Okay.</p> <p>10 Q. Thank you for telling me that.</p> <p>11 A. You're welcome.</p> <p>12 Q. Okay. I stand corrected. And in Note 3</p> <p>13 you do have three drugs listed here. Why did you</p> <p>14 remove the fourth one?</p> <p>15 A. So we debated, because one, it's not -- it</p> <p>16 is an opioid but it is not a drug that is at issue in</p> <p>17 this particular case, so we didn't want to confuse the</p> <p>18 only way -- then we would include all opioids, and then</p> <p>19 you're involving some C-IIIs, some C-IVs, so we felt it</p> <p>20 better to actually look at and limit the drugs that we</p> <p>21 analyze to the ones that are involved in this case.</p> <p>22 Q. So you removed APAP/CD; right?</p> <p>23 A. Correct.</p> <p>24 Q. What does that stand for?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Let's go back to Page 24 of your report.</p> <p>2 In Number 63, Paragraph 63, you talk about various</p> <p>3 types of training that was conducted; right?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review any specific training</p> <p>6 materials that were provided to HBC employees?</p> <p>7 A. I did not.</p> <p>8 Q. Did you assess what percentage of</p> <p>9 employees actually received training related to</p> <p>10 controlled substance diversion at HBC?</p> <p>11 A. I did not.</p> <p>12 Q. On Page 25 of your report -- I'll get</p> <p>13 there.</p> <p>14 A. Can I ask that we go maybe 10, 15 more</p> <p>15 minutes? I'm going to need a break.</p> <p>16 MR. BARNES: Okay. It's 12:53.</p> <p>17 MR. KOBRIN: Should we break for lunch?</p> <p>18 MR. BARNES: Yeah, let's see what --</p> <p>19 A. Before you start that question, I'm just</p> <p>20 letting you know.</p> <p>21 MR. BOGLE: Yeah, I understand. If you</p> <p>22 want to break for lunch that's your prerogative.</p> <p>23 That's your --</p> <p>24 MR. BARNES: Yeah, we've gone over an</p>
<p style="text-align: right;">Page 147</p> <p>1 A. It's Tylenol with codeine.</p> <p>2 Q. And what was the basis for saying that's</p> <p>3 not at issue here?</p> <p>4 A. It is -- it's not a C-II product, and it's</p> <p>5 not part of the hydrocodone family that started as a</p> <p>6 C-III and was moved to a C-II.</p> <p>7 Q. So the three drugs you looked at here that</p> <p>8 appear on the top 100 list -- do you know what numbers</p> <p>9 they appeared on the top 100?</p> <p>10 A. I don't recall. I'd have -- you'd have to</p> <p>11 look at the reliance materials.</p> <p>12 Q. I didn't see that they were numerically</p> <p>13 broken out. I see them listed here and but I don't see</p> <p>14 them numerically broken out as to where they fit on the</p> <p>15 top 100.</p> <p>16 A. Right. They would be in the sources.</p> <p>17 They would have them in the sources if you look at the</p> <p>18 reliance materials and the sources themselves.</p> <p>19 Q. So you're saying in the materials you</p> <p>20 produced I can glean what numbers these -- meaning was</p> <p>21 HYCD/APAP Number 2 on the list?</p> <p>22 A. That is correct.</p> <p>23 Q. I can determine that?</p> <p>24 A. Off the Excel spreadsheet, yeah.</p>	<p style="text-align: right;">Page 149</p> <p>1 hour -- well, almost an hour. How about we break</p> <p>2 around 1:00?</p> <p>3 MR. BOGLE: That's fine. Whatever you all</p> <p>4 want to do.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. Okay, so I think I was at Page 25.</p> <p>7 A. Yes.</p> <p>8 Q. You make a reference in Paragraph 67. The</p> <p>9 first sentence actually says like most pharmacies with</p> <p>10 self-distribution capabilities, the drug warehouse and</p> <p>11 its distribution capabilities are a strategic asset and</p> <p>12 advantage for the organization that improves,</p> <p>13 visibility, tracking, and overall management of drug</p> <p>14 inventory. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What do you mean by improves visibility?</p> <p>17 A. The organization, because they are</p> <p>18 purchasing product, they can see the product as it</p> <p>19 enters the warehouse, as it flows through the supply</p> <p>20 chain, and as it resides on the pharmacy shelf.</p> <p>21 Q. And from a visibility perspective,</p> <p>22 wouldn't it also be true that they can see, for</p> <p>23 example, which doctors are writing the prescriptions</p> <p>24 that are being filled?</p>



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1 A. Oh.  
2 MS. FUMERTON: Objection to form.  
3 A. It's -- so I don't know whether or not  
4 Giant Eagle has that capability or not.  
5 BY MR. BOGLE:  
6 Q. Is that something -- it's not something  
7 you looked at?  
8 A. By doctor? No.  
9 Q. Right. Do you know whether that's  
10 something that HBC ever assessed as part of its  
11 suspicious order monitoring program -- an assessment  
12 of, for example, what percentages of prescriptions came  
13 from specific doctors?  
14 A. I don't know that HBC specifically would  
15 have seen those things, no. It may have been reports  
16 or part of investigations that were conducted through  
17 the stores, the PDLs, and the home office.  
18 Q. Did you see any sort of investigations or  
19 reports like that, though, at any level?  
20 A. There was -- there were some testimony and  
21 some exhibits to the fact that they did look at certain  
22 prescribers, yes.  
23 Q. Was there any sort of specified report  
24 that was run at any regular interval along those lines?

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1 A. Based on prescribers and based on the  
2 testimony that I read I don't know that there was any  
3 concentration itself on regular reports based on  
4 prescribers.  
5 MR. BARNES: If this is a good break  
6 point -- you seem to be pausing -- we don't need to  
7 wait two more minutes to 1:00, but --  
8 MR. BOGLE: That's fine. I don't care.  
9 That's fine.  
10 THE VIDEOGRAPHER: Okay. We are going off  
11 the record at 12:56 PM.  
12 [A recess was taken.]  
13 THE VIDEOGRAPHER: We are back on the  
14 record at 2:01 PM.  
15 BY MR. BOGLE:  
16 Q. Okay. I want to go back to something I  
17 unfortunately skipped over when I was going through  
18 this. If we could go back to your amended report, and  
19 specifically want to look at the materials considered  
20 list, which is Exhibit C. And I want to go to the last  
21 page of that list.  
22 On that page you've got a list of 16  
23 internal production documents. Do you see that?  
24 A. Yes.

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1 Q. Did you specifically select those  
2 documents?  
3 A. Yes, I believe so.  
4 Q. How did you select them?  
5 A. I used them in -- I mean, by reading the  
6 testimony and going through the depositions. I used  
7 that -- I found them that way.  
8 Q. So you pulled these documents from  
9 deposition exhibits?  
10 A. Yes.  
11 Q. All 16 of them?  
12 A. I believe so.  
13 Q. Is there a reason why you only pulled  
14 these 16 exhibits from the depositions and not other  
15 exhibits?  
16 A. What other exhibits?  
17 Q. Is it your understanding that there are  
18 only 16 exhibits used in all the depositions you  
19 reviewed?  
20 A. Oh, no. I just used those because those  
21 were the ones that I used to help form my opinions.  
22 Q. So these are the 16 documents from the  
23 depositions that you've relied on to form your  
24 opinions? Am I understanding you right?

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1 A. Well, I used all of them -- I used all the  
2 testimony, all the documents. They all helped me form  
3 my opinion. But these are the ones that I used for a  
4 specific purpose.  
5 Q. What purpose was that?  
6 A. To further document my citations.  
7 Q. Okay. I guess I'm just still a little  
8 confused as to why these 16 were selected above the  
9 other deposition exhibits. Can you help explain that  
10 for me?  
11 A. Just what I felt needed to be highlighted  
12 because I used them specifically in my report.  
13 Q. So would it be fair to say you viewed  
14 these as the 16 most important documents -- internal  
15 documents to your opinions?  
16 A. No, they're just the ones that I happened  
17 to use that I felt like I needed to highlight so I  
18 could cite and document.  
19 Q. So you're saying all of these are actual  
20 cited in the report itself?  
21 A. I don't know if all of them are. I mean,  
22 it was just a way for -- right or wrong, it was a way  
23 for me as I wrote my report, those were the ones that I  
24 felt like I needed to include.

<p style="text-align: right;">Page 154</p> <p>1 MR. BARNES: Do you want to show her any  2 of these document to refresh her memory?  3 MR. BOGLE: I'm just asking. I don't  4 think --  5 A. And I'm trying to give you a good answer.  6 BY MR. BOGLE:  7 Q. Okay. Were any documents -- internal  8 documents provided to you by counsel that were not  9 specifically requested by you?  10 A. I mean, they gave me -- I didn't  11 request -- I guess I don't understand your question. I  12 didn't really -- they provided me documents, yes,  13 and -- but -- and these documents were contained in  14 those documents. I don't understand your question.  15 Q. In the documents that were provided to you  16 by counsel?  17 A. Yes.  18 Q. Let's go back to Page 27 of your report.  19 You say in Paragraph 74 the volume of HCPs distributed  20 by HBC/GERx generally track below quotas set by the  21 DEA, and you say see Exhibit G; right?  22 A. Yes.  23 Q. Then you say the data shows that  24 distribution of hydrocodone combination products from</p>	<p style="text-align: right;">Page 156</p> <p>1 actually found was that HBC had a reduction in the HCP  2 shipments.  3 Q. Would you expect there to be an increase  4 in all Giant Eagle Pharmacies based on increases in DEA  5 quotas?  6 A. It's really looking at an average overall,  7 that if the DEA nationwide is -- if the DEA nationwide  8 is raising their quotas as a result of an increase in  9 prescriptions and an increase in demand for the  10 product, that a reasonable expectation is that in  11 general every pharmacy could also have that same type  12 of increase.  13 So it's very much a generalization when  14 you talk about what could be expected. In general you  15 would expect if the DEA says there's a higher demand  16 for product and there's more prescriptions, then in  17 general the pharmacies are going to rise at that same  18 rate, which is why the DEA increased their quota to  19 begin with, but what we actually found with Giant Eagle  20 is that the amount of HCP shipments declined.  21 Q. The DEA quotas are done on a nationwide  22 basis; right?  23 A. That is correct.  24 Q. So you've compared the nationwide</p>
<p style="text-align: right;">Page 155</p> <p>1 HBC was below the expected amount on an MME basis  2 between 2012 and 2017 when indexed to the DEA quota for  3 hydrocodone products starting in 2010.  4 Do you see that?  5 A. Yes.  6 Q. What was the process you used here to  7 determine the expected amount of HCPs that HBC should  8 be distributing over this time frame?  9 A. Well, the report doesn't have anything to  10 do with an expected amount. It is strictly a  11 comparison between the DEA quotas and what was actually  12 shipped.  13 Q. Well, you say this was below the expected  14 amount on an MME basis. Do you see that?  15 A. I understand. So to clarify my answer,  16 the idea in this particular exhibit is to show that the  17 DEA -- even though the DEA was increasing quotas, an  18 expectation would be for HBC to also increase their  19 shipments.  20 The DEA is increasing the quotas in  21 response to an increase in prescriptions in the  22 marketplace, so an expected outcome would be for HBC  23 then in turn to have an increase in shipments of HCPs  24 to coincide with the quota, but in reality what we</p>	<p style="text-align: right;">Page 157</p> <p>1 increases to the HCP distribution just in Cuyahoga and  2 Summit Counties; right?  3 A. Correct. But the distribution in those --  4 the number of prescriptions involved in Cuyahoga and  5 Summit Counties is included in the DEA's quotas.  6 Q. Well, so is every other county in the  7 country; right?  8 A. Sure.  9 Q. And so what basis do you have to say that  10 the Summit and Cuyahoga County prescriptions  11 necessarily should increase at the same level as a  12 national quota?  13 A. I didn't. I made a generalization that  14 said one could expect that nationwide if the DEA says  15 look, we're increasing the quota overall nationwide  16 because in general the amount of prescriptions is  17 increasing and it's increasing overall nationwide -- so  18 if you were at parity -- if you're a pharmacy and  19 you're at parity, you would expect then that if the DEA  20 is saying that nationwide the number of prescriptions  21 is going up, that you as a pharmacy chain would also  22 have your prescriptions go up as well, but what we  23 actually found when we looked at the data is that Giant  24 Eagle's prescriptions went down be -- and therefore the</p>

<p style="text-align: right;">Page 158</p> <p>1 shipments out of HBC went down as well.</p> <p>2 Q. Why was this indexed to MME?</p> <p>3 A. That's the way the data was -- because</p> <p>4 that's how the FDA does it. They do it based off of an</p> <p>5 MME basis because it's done through API or active</p> <p>6 pharmaceutical ingredient.</p> <p>7 Q. Is this one of the exhibits, Exhibit G,</p> <p>8 that AGI created?</p> <p>9 A. They designed this particular chart, yes,</p> <p>10 on my direction.</p> <p>11 Q. Do you understand that DEA quotas are</p> <p>12 meant to indicate how much should actually be</p> <p>13 distributed of a specific product?</p> <p>14 A. DEA quotas are actually for manufacturers.</p> <p>15 They're not meant for distributors; they're meant for</p> <p>16 manufacturers. But DEA quotas, the rise of quotas, is</p> <p>17 in response to an increase in the demand for these</p> <p>18 particular products. And the amount of API that the</p> <p>19 DEA allows to be distributed to manufacturers or given</p> <p>20 to manufacturers for their manufacturing capabilities</p> <p>21 is in response to the demand by patients.</p> <p>22 Q. But DEA quotas are not specific to any</p> <p>23 specific distributor as far as how much the DEA saying</p> <p>24 distributor HBC, this is how much we think you should</p>	<p style="text-align: right;">Page 160</p> <p>1 you might have?</p> <p>2 A. No, I did not.</p> <p>3 Q. On Page 28 of your report -- I'm looking</p> <p>4 at the last sentence on Paragraph 79. You say during</p> <p>5 the relevant time period, the share of prescriptions</p> <p>6 for controlled substances dispensed by Giant Eagle</p> <p>7 Pharmacies declined steadily, indicating that the</p> <p>8 pharmacies were exercising effective controls to</p> <p>9 prevent diversion of prescription opioids.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What's the relevant time period you're</p> <p>13 talking about here?</p> <p>14 A. From 2009 through 2018.</p> <p>15 Q. Did you run any specific assessment for</p> <p>16 opioids along these lines?</p> <p>17 A. So the -- what do you -- for all opioids,</p> <p>18 or the at-issue? I mean, you can see from the exhibits</p> <p>19 which analyses were done and which drugs were</p> <p>20 contained.</p> <p>21 Q. Yeah, I'm asking for 2009 to 2018, did you</p> <p>22 look at -- did you assess whether the opioid</p> <p>23 dispensation by Giant Eagle Pharmacies declined</p> <p>24 steadily?</p>
<p style="text-align: right;">Page 159</p> <p>1 be able to legitimately distribute as far as a specific</p> <p>2 product; right?</p> <p>3 A. That is correct. The DEA determines how</p> <p>4 much API should be given to the manufacturers and to</p> <p>5 research facilities.</p> <p>6 Q. And further down on Page 27, Paragraph 76,</p> <p>7 the second sentence you say the ratio of controlled</p> <p>8 substance prescriptions to total prescriptions</p> <p>9 dispensed for all Giant Eagle Pharmacies in Summit and</p> <p>10 Cuyahoga Counties during the relevant time period was</p> <p>11 less than 10 percent, and then you cite to Exhibit H.</p> <p>12 You see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have the complete list of</p> <p>15 controlled substances that went into this calculation?</p> <p>16 A. It is in the Excel spreadsheet. Let me</p> <p>17 think. I believe that particular spreadsheet -- I'd</p> <p>18 have to go back and look, but I believe Giant Eagle</p> <p>19 actually named the controlled substances -- not named,</p> <p>20 but indicated which were controls and non-controls.</p> <p>21 Q. In the source data you provided?</p> <p>22 A. In the source data.</p> <p>23 Q. Did you crosscheck the controlled</p> <p>24 substance list from the source data against any list</p>	<p style="text-align: right;">Page 161</p> <p>1 A. And I'd have to recall. I think most of</p> <p>2 it was done -- other than that one report that I did</p> <p>3 with at-issue drugs, most of the other ones are based</p> <p>4 off of controls in general, or specific only to</p> <p>5 hydrocodone.</p> <p>6 Q. So over this time frame of 2009 to 2018,</p> <p>7 do you know whether HCP sales at Giant Eagle Pharmacies</p> <p>8 steadily declined?</p> <p>9 A. Can you ask that question again?</p> <p>10 Q. Sure. Over the time frame you've listed</p> <p>11 here, 2009 to 2018, do you know whether HCP sales at</p> <p>12 Giant Eagle Pharmacies steadily declined?</p> <p>13 A. I don't think I know specific to HCP, no.</p> <p>14 For the -- give me just a second.</p> <p>15 No, not specific to HCP.</p> <p>16 Q. What are you relying on specifically to</p> <p>17 conclude that the decline of controlled substances</p> <p>18 sales over this time period or dispensation over this</p> <p>19 time period necessarily means effective controls</p> <p>20 against diversion for being exercised?</p> <p>21 A. Well, because the pharmacies were growing,</p> <p>22 they were not filling -- as the growth of the pharmacy</p> <p>23 occurred or as the total prescriptions occurred, the</p> <p>24 amount of controlled substances were going down,</p>

<p style="text-align: right;">Page 162</p> <p>1 therefore indicating a couple of different things.  2 One is that they weren't just  3 inadvertently filling controlled substances. Their  4 controls were in place; they were following their  5 controlled substance manual, so they were only filling  6 prescriptions by legitimate prescribers. They weren't  7 targeting or being attracted by drug-seekers because  8 that type of patient wasn't the kind of patient that  9 was seeking Giant Eagle or using Giant Eagle to fill  10 their prescriptions.  11 Q. Which you're basing those conclusions just  12 based on the fact that the numbers went down; right?  13 Is there any other data you're considering to reach  14 that conclusion?  15 A. Well, I mean, all of the review. When you  16 think of all of the testimony that has been given in  17 this case, when you think about the controls, my review  18 of that testimony in comparison to my experience and  19 the industry standards as I know them, continuing  20 education and other industry-type meetings -- I mean,  21 it's a whole wealth of information that I take into  22 account when I draw these conclusions.  23 Q. But a decline in controlled substances  24 sales by itself does not necessarily mean that</p>	<p style="text-align: right;">Page 164</p> <p>1 and therefore the amount of prescriptions are not going  2 up.  3 BY MR. BOGLE:  4 Q. So in your mind, is it inconceivable for  5 there to be any reason why controlled substances sales  6 would go down in a situation where effective controls  7 do not exist?  8 A. I don't understand your question.  9 Q. Can you conceive of any situation where  10 controlled substances sales would go down in a  11 situation where effective controls do not exist?  12 MR. BARNES: Objection. Calls for  13 speculation.  14 A. Yeah, I mean, I could dream something up,  15 but I'm not here to -- I mean, that's not something I'm  16 here to think about. I didn't actually think about it.  17 BY MR. BOGLE:  18 Q. And you also did not look at whether the  19 opioid prescriptions actually declined during this time  20 period either; right?  21 A. I did not specifically look at opioids,  22 no, in totality.  23 Q. Or HCP specifically; right?  24 A. Correct.</p>
<p style="text-align: right;">Page 163</p> <p>1 effective controls against diversion are being  2 exercised, does it?  3 A. It means that some of them are, yes,  4 because they're not -- one, you don't have the  5 drug-seekers. It will go through -- if people know  6 that you're willy-nilly filling prescriptions and  7 you're not scrutinizing prescriptions, that information  8 will get out and people will come pouring in.  9 Q. So you're saying -- but -- so you're  10 saying that you can look just at the decline in  11 controlled substance sales and necessarily conclude  12 that effective controls against diversions related  13 specifically to opioids exist?  14 A. Yes, I can make that conclusion.  15 Q. And you're basing that on the fact that  16 you think that drug seekers would know if it was easy  17 to get opioids from these pharmacies and the numbers  18 would go up?  19 MR. BARNES: Objection. That misstates  20 her former testimony.  21 A. And like I've said before, it's a  22 combination of products. The reason -- or a  23 combination of information. The reason that it's going  24 down is because they are following effective controls</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. We can go to Page 34 of your report.  2 A. I'm sorry. 34?  3 Q. 34. Yes, ma'am.  4 You say -- it's a carryover paragraph,  5 Paragraph 96. You say however, a pharmacist may at any  6 time exercise their professional judgment and refuse to  7 fill a prescription that appears fraudulent, outside  8 the scope of practice, or not in accordance with  9 standard treatment guidelines.  10 Do you see that?  11 A. Yes.  12 Q. Did you assess in this case whether any  13 Giant Eagle pharmacist refused to fill any opioid  14 prescriptions in Summit or Cuyahoga County?  15 A. I did read about that in the depositions,  16 yes.  17 Q. Which deposition?  18 A. I'm not going to -- I can't recall whose  19 deposition it was, but I know it was -- there were a  20 couple of them, and I can't recall the gentleman's  21 name.  22 Q. So outside of reading depositions, did you  23 do any analysis of your own on this issue?  24 A. Well, my analysis overall is I know that</p>

<p style="text-align: right;">Page 166</p> <p>1 it happens. It's happened -- I mean, I'm a practicing  2 pharmacist of over 25 years, so I know that it occurs;  3 I know that it happens. I didn't necessarily need to  4 do an analysis. It's part of the daily  5 responsibilities of a pharmacist to scrutinize every  6 controlled substance prescription, and they're given  7 the authority then to refuse to fill it if need be.  8 Q. No, I understand that. I'm just asking  9 whether you specifically analyzed whether any Giant  10 Eagle pharmacies in Summit or Cuyahoga refused to fill  11 opioid prescriptions.  12 A. My analysis came from the materials that I  13 read.  14 Q. The depositions?  15 A. The depositions that said that they had  16 the authority to do so and in fact exercised that  17 judgment.  18 Q. Are you aware of any specific numbers as  19 to how many times that occurred from 2009 to 2018?  20 A. No, I am not. I believe the statement on  21 the record says frequently or many or it happens.  22 Q. If we can go to Page 42 of your report.  23 [Discussion off the record.]  24 MR. BARNES: What paragraph are you going</p>	<p style="text-align: right;">Page 168</p> <p>1 perspective relying on to say that Giant Eagle is  2 highly focused on preventing theft and diversion by in  3 many cases exceeding expectations related to federal  4 and state guidelines? What documents are you going to  5 rely on for that?  6 A. So the -- I'm relying on, gosh, all of the  7 documents that I've read. And I mean, there's a number  8 of documents where they are talking about the different  9 things that they did to exceed expectations. Just like  10 I have prior talked about with the inventory counts,  11 with the security controls. I mean, there are a number  12 of different areas where that occurred specific to  13 Giant Eagle.  14 Q. Okay. So what else? You've talked about  15 inventory counts and security controls. I mean, this  16 is pretty central to the case. I'd like to know what  17 else you're going to come in and say.  18 A. Well, all of their controls. Some of them  19 are in accordance with state guidelines and some of  20 them exceed those state guidelines.  21 Q. What controls specific to preventing  22 diversion of controlled substances are you referring  23 to?  24 A. All of them.</p>
<p style="text-align: right;">Page 167</p> <p>1 to?  2 MR. BOGLE: 123.  3 BY MR. BOGLE:  4 Q. If you look on Paragraph 123, the third  5 sentence says Giant Eagle is highly focused on  6 preventing theft and diversion by in many cases  7 exceeding expectations related to federal and state  8 guidelines.  9 Do you see that?  10 A. Yes.  11 Q. When it comes to suspicious order  12 monitoring for controlled substances, would this go  13 back to your testimony earlier about you relying on  14 inventory counts and security controls to support this  15 statement?  16 MR. BARNES: Objection. Misstates her  17 prior testimony, but --  18 A. So I'm confused by your question. Can  19 you --  20 BY MR. BOGLE:  21 Q. Sure. I'll reask -- I'll ask it a  22 different way.  23 A. Okay.  24 Q. What are you specifically from a document</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. You say all of them. What -- can you give  2 me some sort of explanation of what that means?  3 A. Well, all of Giant Eagle's controls when  4 it comes to -- I mean, they write a controlled  5 substance manual for the pharmacist. That was not  6 required by state law. There are a number of different  7 things that Giant Eagle did both at the store level  8 within their warehouses using automation for picking of  9 their products within the warehouse. Exercising the  10 different security controls with guards and breaks and  11 counts.  12 I mean, there's a number of different  13 things. As I sit here today I can't give you an  14 exhaustive list.  15 Q. The CSA manual that you referenced -- when  16 was that first created?  17 A. Oh, I don't remember. The -- you mean the  18 controlled substance manual that Giant Eagle authored?  19 Q. Yeah.  20 A. At this time I can't recall.  21 Q. The automation you mentioned -- is that at  22 the distribution center level? Is that what you're  23 talking about?  24 A. Yes.</p>



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<p>1 Q. When did that begin -- automation for 2 their drugs? 3 A. I don't have their dates. I don't have 4 the dates memorized. 5 Q. Let's go to Page 44 of your report. 6 You've got some bullet points on this page referring to 7 physical security controls. Do you see those? 8 A. I do. 9 MR. BARNES: Those begin on Page 43, by 10 the way. 11 MR. BOGLE: Okay. 12 MR. BARNES: Just -- he's looking at a 13 one-page -- 14 BY MR. BOGLE: 15 Q. You see there the next-to-last bullet 16 point says order specialists to monitor store orders 17 for accuracy and appropriateness and any deviations 18 from typical ordering patterns? 19 Do you see that? 20 A. I do. 21 Q. When did that process go into effect? 22 A. I'm not sure. I don't know that the dates 23 were specified in the deposition. 24 Q. Are you aware of what procedure that these</p>	<p>1 these people would have undertaken to do their job? 2 A. Well, I mean, their training and their -- 3 would be documented in their job descriptions. So when 4 you look at their job descriptions, when you look -- 5 that will include the different training, the different 6 education, how they were taught to do their job, is 7 specific to what they are doing and the things that -- 8 and how it plays into the prevention of theft and 9 diversion. 10 Q. Did you look at any of the job 11 descriptions for order specialists? 12 A. No, I didn't need to, because I understand 13 what that role is and essentially what they do. 14 Q. Do you have a sense then as to what 15 specific training they received? 16 A. Well, they've -- they're part of the job 17 that allows them to be a picker, and as they pick with 18 time they understand what the patterns and the 19 frequency and the quantities are for standard orders 20 for standard stores. 21 Q. Do you know what a new picker -- what they 22 would be trained on before they would start doing their 23 job? 24 A. They would be trained according to Giant</p>
Page 171	Page 173
<p>1 order specialists would follow to determine if orders 2 were accurate and appropriate? 3 A. So order specialists are -- they refer to 4 a number of different people. Again, this information 5 came from this deposition, from Mr. Durr's deposition, 6 who is keenly aware of the different controls, 7 policies, and procedures that they have in place at the 8 distribution center. 9 Q. Okay. I'm just asking if you know. I'm 10 asking if you know what procedure was followed by the 11 order specialists? 12 A. Well, the order specialists are -- I 13 believe -- at some point in time he refers to them as 14 pickers, so these order specialists are limited. 15 There's only a few of them, and they are aware of the 16 general picking practices for each and every store, 17 that they would readily recognize and be able to see if 18 a store was requesting a quantity outside what was 19 normal for their particular stores. 20 Q. Are you aware of any specific written 21 procedure these order specialists follow to do their 22 job? 23 A. I'm not aware of anything written, no. 24 Q. Are you aware of any specific training</p>	<p>1 Eagle's -- whatever their training protocol is. 2 Q. And what is that? Have you seen that? 3 A. I have not specifically seen their 4 training protocol, no. 5 Q. You reference Giant Eagle's controlled 6 substance dispensing guidelines. Do you recall 7 discussing that in your report? 8 A. Yes. 9 Q. When did those first go into use? 10 A. I don't know. I can't recall. 11 Q. Do you know who they were distributed 12 to -- what class of employees? 13 A. I believe it was distributed to the 14 stores. 15 Q. To the pharmacies? 16 A. I believe so. 17 Q. Have you reviewed those guidelines? 18 A. I have not reviewed the guidelines, no, 19 but based on my experience and based on the information 20 that I have read, it's a guideline that helps the 21 pharmacists and pharmacy technicians develop red flags 22 and to be able to detect certain prescriptions that 23 potentially could be illegitimate. 24 Q. And you're basing that on what people in</p>

<p style="text-align: right;">Page 174</p> <p>1 depositions have said about the guidelines? Is that  2 true?</p> <p>3 A. It's what's said about the guidelines and  4 what -- an assumption that I'm making of what's in  5 those guidelines, because they're standard pharmacy  6 practice guidelines that most pharmacists are going to  7 follow, and Giant Eagle chose to ensure that they were  8 more specific about the guidelines that they wanted  9 their pharmacists and their pharmacy technicians to  10 follow concerning controlled substances.</p> <p>11 Q. Go to Page 46 of your report, please, on  12 Paragraph 130. The second sentence, you say if issues  13 are detected or questions raised the order will be  14 suspended until management finds a resolution.  15 Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. Did you assess whether HBC suspended any  18 opioid orders for Summit or Cuyahoga County pharmacies  19 at any point in time?</p> <p>20 A. For Summit and Cuyahoga?</p> <p>21 Q. Right.</p> <p>22 A. I know that there were some that were  23 suspended. As far as I know they weren't in those two  24 counties.</p>	<p style="text-align: right;">Page 176</p> <p>1 how orders -- yes, how orders would be reviewed and  2 suspended.</p> <p>3 Q. Do you have a recollection of how that  4 process worked under the guidelines?</p> <p>5 A. Well, it's based on certain triggers of --  6 Giant Eagle today -- the trigger that they're currently  7 using at the warehouse is based off of an electronic  8 system. Prior to that you would have orders that would  9 be suspended. The order specialist may find an error  10 based off of unusual-sized frequency or pattern in  11 which they would hold an order until they could get a  12 hold of somebody that would further clarify and then  13 they would either fix the order or they would let it go  14 through based on the information they would get after  15 that.</p> <p>16 Q. Have you reviewed any specific algorithm  17 that's been used to flag suspicious orders?</p> <p>18 A. I've reviewed several of them.</p> <p>19 Q. For HBC specifically?</p> <p>20 A. Well, we've looked at all of McCann's  21 methodologies and how those have applied, and then I  22 also have a general understanding of the thresholds  23 that Giant Eagle uses.</p> <p>24 Q. When did Giant Eagle start utilizing</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. Have you seen any written guidelines for  2 warehouse employees to follow to determine whether they  3 should suspend a controlled substance order?</p> <p>4 A. There is some information in the  5 depositions that talks about the different triggers and  6 the different guidelines for when to suspend an order,  7 so yes, there is information in the testimony.</p> <p>8 Q. Have you actually read the guidelines  9 themselves, or just the testimony talking about the  10 guidelines?</p> <p>11 A. I've read most of the exhibits that refer  12 to -- as best as I can recall that refer to those  13 guidelines throughout the years. There have been --  14 there's multiple exhibits in different depositions and  15 at different periods of time.</p> <p>16 Q. Just so I understand, you're saying if  17 they were marked as an exhibit to a deposition in your  18 reliance materials you would have reviewed it?</p> <p>19 A. Yeah, for the most part I reviewed all of  20 them, yes.</p> <p>21 Q. And you have a specific recollection of  22 reviewing these warehouse guidelines in one of the  23 exhibits to the deposition?</p> <p>24 A. I have specific recollection of reviewing</p>	<p style="text-align: right;">Page 177</p> <p>1 thresholds for suspicious order monitoring?</p> <p>2 A. I believe the date was -- I can't  3 remember. I'd have to look it up. And what I'm  4 referring to, just to be clear, is their electronic  5 system of thresholds; right? That's what you asked me  6 for? I'm sorry.</p> <p>7 Q. I did, yeah.</p> <p>8 A. Yeah.</p> <p>9 Q. Was there a manual threshold system at  10 some time before that?</p> <p>11 A. I don't -- no, there wasn't a manual.  12 They've had -- they have had different reports that  13 have been running for years, and those reports have  14 evolved in order to flag and define different  15 thresholds. There isn't a single threshold system that  16 can be deployed that effectively -- that can  17 effectively identify a true suspicious order. So using  18 a threshold-type system is -- it's one of the tools  19 that Giant Eagle employs, and they've been using a  20 threshold system for several years, and it has evolved  21 as their technology has evolved.</p> <p>22 Q. So if you go to Page 49 of your report.  23 In Paragraph 141 you reference a monthly threshold  24 system starting in 2013.</p>

<p style="text-align: right;">Page 178</p> <p>1 A. There you go.</p> <p>2 Q. Is that what you're referring to?</p> <p>3 A. Yeah. Told you I had to look it up.</p> <p>4 Q. So that's what you're referring to when</p> <p>5 you talk about the automated thresholds; right?</p> <p>6 A. These are the automated reporting.</p> <p>7 Q. Right. So beginning in 2013, when an</p> <p>8 order was flagged using this system, would that order</p> <p>9 be blocked?</p> <p>10 A. This one in 2013, the order itself, it was</p> <p>11 only flagged for needing further investigation. It</p> <p>12 doesn't mean that the order was actually suspicious; it</p> <p>13 just is a trigger that is flipped so that somebody can</p> <p>14 do further investigation.</p> <p>15 Q. Right. So while that investigation was</p> <p>16 ongoing using the system -- starting with the one in</p> <p>17 2013 that -- this monthly system that you're talking</p> <p>18 about here -- first of all, what sort of employee would</p> <p>19 be tasked to do that investigation?</p> <p>20 A. Well, the employee -- the employee that</p> <p>21 was tasked sort of -- the information would be brought</p> <p>22 to the attention of the pharmacy district leader, which</p> <p>23 by the way I believe in most cases is also a</p> <p>24 pharmacist, and they're the ones that are the</p>	<p style="text-align: right;">Page 180</p> <p>1 have been outside these two counties, but there are --</p> <p>2 these are some of the questions that I asked as I was</p> <p>3 looking at their controls.</p> <p>4 Q. So are you aware of any orders under this</p> <p>5 monthly ordering threshold system in 2013 from Summit</p> <p>6 and Cuyahoga Counties that you can cite to or you</p> <p>7 intend to cite to that were held or stopped after they</p> <p>8 were flagged?</p> <p>9 A. I don't intend to call anything out as a</p> <p>10 specific example in the 2013 time frame.</p> <p>11 Q. In the -- you reference in Paragraph 141</p> <p>12 the threshold system advanced to daily thresholds based</p> <p>13 on independent store dynamics, but that part you don't</p> <p>14 have a date. Do you know when that occurred?</p> <p>15 A. I believe that was after they opened GERx</p> <p>16 because that was the advancement in technology.</p> <p>17 Q. Do you intend to testify that the</p> <p>18 technology employed by GERx was not available in 2013?</p> <p>19 A. It wasn't available to Giant Eagle, no.</p> <p>20 Q. How do you know that?</p> <p>21 A. Because it was under development.</p> <p>22 Q. Have you assessed whether similar</p> <p>23 technological systems were already being used by other</p> <p>24 distributors in 2013?</p>
<p style="text-align: right;">Page 179</p> <p>1 operational supervisor for the store level.</p> <p>2 Q. Do you know if the pharmacy district</p> <p>3 leader covering Summit and Cuyahoga Counties was a</p> <p>4 pharmacist?</p> <p>5 A. Yes.</p> <p>6 Q. And who was that?</p> <p>7 A. I've read so many reports. I cannot</p> <p>8 recall his name.</p> <p>9 Q. So while that investigation was ongoing by</p> <p>10 the pharmacy district leader, what would happen to the</p> <p>11 order using -- under the 2013 system?</p> <p>12 A. Well, in 2013, again, it was a flag, but</p> <p>13 in 2013, that order would continue to go through.</p> <p>14 However, because Giant Eagle is a captive</p> <p>15 self-distributor, at any time if they had a concern</p> <p>16 about an order they could certainly stop it and/or</p> <p>17 quarantine the product.</p> <p>18 Q. Did you assess whether that was actually</p> <p>19 done in any situation, where an order was flagged under</p> <p>20 the system from 2013, it went on through, and it was</p> <p>21 pulled back later, quarantined or stopped?</p> <p>22 A. I believe there was an order or two. I</p> <p>23 may have my time frames -- but I believe there were a</p> <p>24 couple of orders. However, it was not -- it may even</p>	<p style="text-align: right;">Page 181</p> <p>1 A. No, I have not.</p> <p>2 Q. You can go to Page 50 of your report. In</p> <p>3 Paragraph 144, a few sentences from the bottom, there's</p> <p>4 a sentence that says furthermore, such threshold-based.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you see that sentence?</p> <p>7 A. Yes.</p> <p>8 Q. You say furthermore, such threshold-based</p> <p>9 methods are neither an effective nor a rational means</p> <p>10 to detect diversion of controlled substances for</p> <p>11 shipments between divisions of the same company.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. So do you intend to testify that the</p> <p>15 thresholds are not effective method to detect</p> <p>16 suspicious orders?</p> <p>17 A. Yes, there -- so threshold meth --</p> <p>18 thresholds and establishing a threshold system is only</p> <p>19 a tool. It cannot be used in isolation to determine</p> <p>20 whether an order is suspicious or not.</p> <p>21 Q. But once an order is flagged using a</p> <p>22 threshold, what you should go next is doing due</p> <p>23 diligence to confirm or refute whether it's actually</p> <p>24 suspicious; true?</p>

<p style="text-align: right;">Page 182</p> <p>1 A. Again, the threshold is a tool and how you  2 design the tool. Every threshold system that you use  3 has fatal flaws, and you need to understand those  4 flaws, and by understanding those flaws based on the  5 nature of your business you can determine then whether  6 or not an order that is flagged needs further  7 investigation or not.  8 Q. So it's your opinion then that just  9 because an order is flagged it doesn't necessarily  10 require further due diligence?  11 A. I'm not saying it doesn't require further  12 due diligence. What I'm saying is somebody makes --  13 needs to then make a determination whether or not it  14 requires further due diligence.  15 Q. So it needs to be looked at at the very  16 least; right?  17 A. That is correct.  18 Q. What are the fatal flaws with HBC's  19 threshold system that they employed in 2013?  20 A. Oh. Well, the threshold system that they  21 had in 2013 -- it flagged orders. It was an average --  22 they used an average. They used a nation -- not  23 nationwide, but their company average, and it was  24 aggregated through the entire month.</p>	<p style="text-align: right;">Page 184</p> <p>1 and that the threshold system was -- it was a redundant  2 tool that they added because that seemed to be where  3 the industry going -- where the industry was going and  4 what the expectations were in the industry, and all it  5 proved is that Giant Eagle had sufficient controls to  6 prevent theft and diversion.  7 Q. But in order for the threshold system to  8 prove that, you would have to assume that it in and of  9 itself was an adequate system; right? Otherwise it  10 can't validate anything.  11 A. Right, and -- well, but based on -- but  12 even as technology advanced and their systems became  13 more sophisticated, nothing changed. They didn't  14 identify even -- they didn't identify more. So yes,  15 they may have used a rudimentary threshold system in  16 2013 that was the best thing available to them at the  17 time, but even as technology advanced and they took  18 advantage of more advanced software and more  19 complicated algorithms, the outcome was the same, which  20 is that no suspi -- or limited suspicious orders, very  21 little suspicious orders were identified, and therefore  22 you can conclude and I have concluded that their  23 controls are sufficient.  24 Q. I didn't see an analysis in your report as</p>
<p style="text-align: right;">Page 183</p> <p>1 So what you got is as you were reaching  2 your threshold potentially -- as you were reaching your  3 threshold you didn't hit those thresholds ever until  4 the end of the month, so it was more of a look back and  5 be able to see stores that were constantly -- or not  6 constantly, but if they were exceeding certain  7 thresholds, that somebody could keep an eye on them.  8 Q. We can go to Page 64 of your report. You  9 say in the bullet point there starting with despite  10 implementing -- do you see that?  11 A. Uh-huh.  12 Q. It says despite implementing a threshold  13 system to monitor for suspicious orders there was no  14 change in the number of suspicious orders validating  15 that existing policies and procedures were sufficient  16 to prevent theft and diversion.  17 Do you see that?  18 A. Yes.  19 Q. You agree this conclusion assumes that the  20 threshold system that was implemented was adequate;  21 right?  22 A. No, what I'm assuming what is adequate and  23 even more than adequate are Giant Eagle's policies,  24 procedures, and controls regarding theft and diversion,</p>	<p style="text-align: right;">Page 185</p> <p>1 to the number of suspicious orders flagged over time  2 using these different systems. Have you conducted such  3 an analysis?  4 A. Based on all of the information that I  5 have read, there haven't been any. There's been a  6 couple and they have been outside these two counties.  7 Q. Have you independently verified that  8 outside of review of the depositions?  9 A. I haven't needed to do that because --  10 Q. I'm just asking if you have.  11 A. I have not. I have not because I didn't  12 feel like I needed to. There are people that -- within  13 the organization that have validated all of this  14 information.  15 Q. But you didn't undertake any assessment of  16 that on your own outside of reviewing the transcripts;  17 right?  18 A. I didn't feel like I needed to.  19 Q. So that's a no; right?  20 A. I didn't feel like I needed to.  21 Q. I'm just asking if you did or you didn't.  22 A. I didn't feel like I needed to.  23 MR. BARNES: Okay.  24 BY MR. BOGLE:</p>

<p style="text-align: right;">Page 186</p> <p>1 Q. But you didn't; right?</p> <p>2 MR. BARNES: Objection. Asked and</p> <p>3 answered. Let's move on.</p> <p>4 MR. BOGLE: She hasn't come close to</p> <p>5 answering the question and you know that.</p> <p>6 MR. BARNES: Let's move on.</p> <p>7 BY MR. BOGLE:</p> <p>8 Q. You didn't do it, did you?</p> <p>9 A. I didn't have to.</p> <p>10 Q. You didn't feel like you had to?</p> <p>11 A. I didn't have to.</p> <p>12 MR. BARNES: This is five times now.</p> <p>13 Let's move on.</p> <p>14 BY MR. BOGLE:</p> <p>15 Q. On the last bullet point here on Page 64</p> <p>16 you say in the second sentence the DEA believes that</p> <p>17 Giant Eagle provides effective controls and procedures</p> <p>18 by inspecting their stores and distribution center</p> <p>19 regularly and issuing licenses to operate.</p> <p>20 You see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you intend to testify on behalf of the</p> <p>23 DEA as to what they specifically believe?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 188</p> <p>1 licenses means that they believe that effective</p> <p>2 controls would take place -- effective controls were in</p> <p>3 place or they wouldn't continue to give them licenses</p> <p>4 to operate.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. Are you basing that on any discussion with</p> <p>7 anybody at these regulatory bodies?</p> <p>8 A. No.</p> <p>9 Q. Are you basing that on anything outside of</p> <p>10 the fact that they have continued to license them?</p> <p>11 A. I mean, when you look and you understand</p> <p>12 what the licenses mean and you understand that they</p> <p>13 audit and they check and they go through and inspect</p> <p>14 what they expect, one can draw a logical conclusion</p> <p>15 that they approve their policies, procedures, and</p> <p>16 controls.</p> <p>17 Q. I'm just asking if you're relying on</p> <p>18 anything outside of the fact that they've continued to</p> <p>19 license them to support the opinion you're offering in</p> <p>20 this bullet point.</p> <p>21 A. Yeah, they --</p> <p>22 Q. It's a simple question.</p> <p>23 A. Right, but they license and they inspect</p> <p>24 them. It's a simple answer.</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. And you say a similar thing about the</p> <p>2 state board of pharmacy for Ohio and other state boards</p> <p>3 of pharmacy. I mean, do you intend to come and testify</p> <p>4 that you know what individuals at these regulatory</p> <p>5 bodies think?</p> <p>6 A. What I'm testifying to is the fact that</p> <p>7 these regulatory bodies are issuing licenses to</p> <p>8 operate. Before they can issue those licenses to</p> <p>9 operate, they have rules and regulations that need to</p> <p>10 be followed that need to be proven to be followed, and</p> <p>11 these regulatory agencies, they do unannounced audits</p> <p>12 and visits and checks to continually make sure that</p> <p>13 Giant Eagle is in compliance with rules and</p> <p>14 regulations. If Giant Eagle was outside compliance or</p> <p>15 had failures in their controls, they no longer would</p> <p>16 issue these licenses.</p> <p>17 Q. So outside of the granting of the</p> <p>18 licenses, do you intend to testify as to what any</p> <p>19 people in these regulatory bodies think or what the</p> <p>20 regulatory bodies think of them collectively?</p> <p>21 MR. BARNES: Asked and answered, but go</p> <p>22 ahead.</p> <p>23 A. Again, I don't work for these regulatory</p> <p>24 bodies, but the fact that they are issuing these</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Have you reviewed any of the inspections?</p> <p>2 A. I have not personally reviewed the</p> <p>3 inspections. I have reviewed the testimony of the</p> <p>4 people that have reviewed the inspections.</p> <p>5 Q. So you've talked about licensing and</p> <p>6 inspections. Anything else you're relying on for this</p> <p>7 conclusion about these people's internal beliefs?</p> <p>8 A. With regard to the DEA and the state</p> <p>9 board --</p> <p>10 MR. BARNES: Object to the form of the</p> <p>11 question. Sorry.</p> <p>12 A. With regard to the DEA and the state</p> <p>13 board? Is that -- what's your question?</p> <p>14 BY MR. BOGLE:</p> <p>15 Q. Uh-huh. Yeah.</p> <p>16 A. What's your question?</p> <p>17 Q. You mentioned inspections and licensing.</p> <p>18 Is there anything else that you intend to rely on to</p> <p>19 support the conclusion in this bullet point as to the</p> <p>20 beliefs of these state or federal regulatory bodies?</p> <p>21 A. Just those two points, that they license</p> <p>22 and they inspect them.</p> <p>23 Q. Thank you.</p> <p>24 If you can go to Page 58 of your report.</p>



<p style="text-align: right;">Page 190</p> <p>1 You see there's a footnote there at the bottom of the</p> <p>2 page that says my review of Dr. McCann's -- of</p> <p>3 extensive reliance materials is ongoing and I may</p> <p>4 supplement my opinions as a result.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Have you at this point completed your</p> <p>8 review of Dr. McCann's reliance materials?</p> <p>9 A. For the particular conclusions that I have</p> <p>10 drawn, yes.</p> <p>11 Q. Is there anything else in his reliance</p> <p>12 materials that you think you need to see to draw any</p> <p>13 additional conclusions?</p> <p>14 A. Not at this time, no.</p> <p>15 Q. On Page 59, Paragraph 159, the second</p> <p>16 sentence, you say although as of today I have not been</p> <p>17 able to evaluate the basis for the thresholds Dr.</p> <p>18 McCann uses in his maximum daily dosage units approach,</p> <p>19 I note that the results of this approach are absurd.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Have you been able to evaluate the basis</p> <p>23 for those thresholds as of today?</p> <p>24 A. No, I have not.</p>	<p style="text-align: right;">Page 192</p> <p>1 industry. There is no industry standard. Everybody is</p> <p>2 still playing with threshold and threshold systems and</p> <p>3 how best to identify and flag.</p> <p>4 So they're not proven. They're not</p> <p>5 standard. He doesn't describe any principals that he</p> <p>6 follows with regard to these methodologies and he</p> <p>7 doesn't point out any of his own flaws. He just says</p> <p>8 here it is.</p> <p>9 Q. What sort of transaction analysis would</p> <p>10 you conduct to do the review that he did?</p> <p>11 A. And as I've stated earlier, a</p> <p>12 threshold-type system has flaws. It doesn't matter</p> <p>13 which one you pick. You're going to have flaws.</p> <p>14 The --</p> <p>15 Q. So even using a non-threshold-based</p> <p>16 analysis, how would you do it?</p> <p>17 A. I don't --</p> <p>18 Q. To do the kind of analysis he did as far</p> <p>19 as the number of suspicious orders?</p> <p>20 MR. BARNES: Objection. Outside the scope</p> <p>21 of the report. She provides criticisms of Dr. McCann's</p> <p>22 approaches. She's not here to tell him how he should</p> <p>23 have done his job.</p> <p>24 MR. BOGLE: Well, she can say that.</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Are you actively trying to do so?</p> <p>2 A. Not at this time.</p> <p>3 Q. If we go to Page 52 of your report. I'm</p> <p>4 on Paragraph 147. The third sentence you say yet</p> <p>5 another fatal flaw that spans his transactions analyses</p> <p>6 is that Dr. McCann is using unproven, nonstandard,</p> <p>7 unprincipled methodologies that are void of research</p> <p>8 and application of widely-accepted professional</p> <p>9 principles.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is that a sentence that you drafted or one</p> <p>13 that came initially from AGI?</p> <p>14 A. Well, I mean, it's information that was</p> <p>15 part of our discussions. I mean, we talked about each</p> <p>16 one of these. So did they transcribe my language?</p> <p>17 Possibly, yes.</p> <p>18 Q. And what is your basis to say that his</p> <p>19 transactions analyses are unproven, nonstandard,</p> <p>20 unprincipled methodologies? What are you relying on to</p> <p>21 support that?</p> <p>22 A. Well, one, so he doesn't cite anything.</p> <p>23 He doesn't cite why he chose those methodologies. The</p> <p>24 methodologies aren't proven. There is no proof in the</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Right. So I'm not here to tell Dr. McCann</p> <p>2 how to do his report, and I'm not -- yeah, I'm not here</p> <p>3 to do that. What I can tell you is the methodologies</p> <p>4 that he chose have flaws.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. Okay, so my question is if you were doing</p> <p>7 this sort of analysis, what methodology would you</p> <p>8 choose?</p> <p>9 A. But I'm not here to provide that analysis.</p> <p>10 That's beyond the scope of what I was asked to do.</p> <p>11 Q. Do you think you're qualified to do that?</p> <p>12 A. To come up with a methodology?</p> <p>13 Q. Correct.</p> <p>14 A. It's not something I would engage in, no.</p> <p>15 Q. And if we can look at -- further down on</p> <p>16 Page 52. The last two sentences say -- on Paragraph</p> <p>17 147. I'm sorry.</p> <p>18 Finally, in all five of Dr. McCann's</p> <p>19 approaches, Dr. McCann flags all transactions</p> <p>20 subsequent to the first flagged transaction. This</p> <p>21 means that he automatically impugns all subsequent</p> <p>22 transactions without an analysis of the fundamental</p> <p>23 properties of the transaction -- transactions, thereby</p> <p>24 abandoning whatever modicum of professional principle</p>

<p style="text-align: right;">Page 194</p> <p>1 might have supported his approach.          2 Do you see that?          3 A. I do.          4 Q. Did this language here come from AGI?          5 A. Oh, no. It was mine.          6 Q. And then let me ask you. As far as this          7 specific component that you're criticizing, what          8 methodology or principles are you relying on to say          9 that subsequent transactions should not be flagged if a          10 suspicious order is not investigated?          11 A. So understanding that when a pharmacy          12 places an order, it's for replenishment of a product,          13 and you cannot then say that every order from that          14 point forward should be considered suspicious, because          15 they're placing orders based on prescriptions that have          16 been filled, that have been filled and have gone out          17 the door.          18 So to take an analysis threshold, what          19 have you, and say just because this very first order          20 needs to be flagged and everything after that should be          21 flagged as well is absurd.          22 Q. What process would you undertake if a          23 suspicious order was flagged but not investigated as to          24 the subsequent orders?</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. Any order that is flagged by a threshold          2 system as suspicious should be investigated; right?          3 A. No.          4 Q. No?          5 A. Which we've already talked about before.          6 Just because a threshold system may highlight an order          7 that somebody needs to look at doesn't -- the threshold          8 system is not saying this order is suspicious. A          9 threshold system only flags an order for somebody to          10 look at.          11 Q. How do you distinguish between looking at          12 an order and investigating an order? I guess I'm not          13 following the distinction.          14 A. Well, to me an investigation is something          15 that is more formalized. When you look at an order and          16 you understand the flaws of the tool that you're using          17 and you understand the normal pattern, frequency, and          18 order size of the store in which that order belongs to,          19 somebody makes a decision whether or not that order can          20 continue. The threshold system is only a tool.          21 Q. So if a order is flagged using a threshold          22 system, what should a person do in looking at that          23 order to determine whether it's suspicious or not?          24 A. So that particular person would look at</p>
<p style="text-align: right;">Page 195</p> <p>1 MR. BARNES: Same --          2 BY MR. BOGLE:          3 Q. That same product.          4 MR. BARNES: Same objection as prior.          5 Outside the scope of her report.          6 A. Exactly. I'm not here to determine the          7 best way to do it. I was here and I was asked to          8 determine whether or not Giant Eagle was in compliance.          9 BY MR. BOGLE:          10 Q. But I'm just talking about a specific          11 component of what you're talking about in your report,          12 and I'm asking if you -- strike that.          13 What process would you undertake or would          14 you think is a reasonable process to undertake to          15 assess whether subsequent orders are suspicious of the          16 same product if a prior order has been flagged and not          17 investigated?          18 MR. BARNES: Objection. Same objection --          19 BY MR. BOGLE:          20 Q. If you don't know, that's fine.          21 A. It's not that I don't know or I don't have          22 or cannot form opinions. What I'm saying in my report          23 is that the way Dr. McCann approached it is          24 inappropriate.</p>	<p style="text-align: right;">Page 197</p> <p>1 the -- like I said, would look at the information, just          2 like what Giant Eagle said. They look at the          3 information, they understand their stores -- they know          4 their customers, they understand their stores, and they          5 make the determination whether or not that is a false          6 positive.          7 Q. Well, what specifically would you look at?          8 A. Just like the DEA has given guidance.          9 You're looking at the unusual size, frequency, and          10 pattern for that particular product for that store.          11 Q. But how would you make that assessment?          12 A. Through knowledge and experience and          13 knowing your customer. The DEA says you have to know          14 your customer, and Giant Eagle knows their customers          15 better than most because they're their pharmacies.          16 They're owned by their own company.          17 Q. Have you seen any written investigations          18 done by anyone at HBC or Giant Eagle as to flagged          19 suspicious opioid orders?          20 A. I recall testimony that investigations          21 have been done, but I just -- I recall written          22 testimony that the process has worked and          23 investigations have been completed.          24 Q. But have you reviewed any of the written</p>

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1 investigations that have been done, if they've been  
2 done at all?  
3 A. Well, I know that there have been  
4 investigations done because it's in the sworn  
5 testimony, and so insofar as they provided the  
6 information in the sworn testimony, that would have  
7 been what I reviewed.  
8 Q. So did you go back behind that then and  
9 look at the actual investigation that was conducted to  
10 assess whether you thought it was an appropriate  
11 investigation?  
12 MR. BARNES: You mean in addition to the  
13 depositions?  
14 MR. BOGLE: Yeah.  
15 MR. BARNES: Like the exhibits?  
16 BY MR. BOGLE:  
17 Q. Did you look at anything to say -- did you  
18 look at any specific investigation to say I think this  
19 is a good investigation or a bad investigation as to a  
20 specific order?  
21 A. No, my job was to evaluate their controls,  
22 not to follow up on whether or not there was an  
23 investigation or not. I needed to look at their  
24 controls, their policies and their procedures, and to

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1 assess whether or not they were in compliance with the  
2 Controlled Substances Act. That's what I was tasked  
3 with.  
4 Q. Well, isn't part of the process of having  
5 controls doing investigations on orders that may be  
6 suspicious?  
7 A. That would be part of their controls, yes,  
8 but it doesn't mean that I necessarily had to go in and  
9 look specifically at an investigation. I just had to  
10 make sure that their controls were in place and that  
11 they were in compliance.  
12 Q. But you made that compliance determination  
13 without looking at what they actually did to  
14 investigate; right?  
15 MR. BARNES: Objection. That misstates  
16 her testimony.  
17 BY MR. BOGLE:  
18 Q. If it misstates it, let me know.  
19 A. I made the compliance -- the opinion based  
20 on their compliance, based on the stated testimony of  
21 the Giant Eagle employees.  
22 Q. If you can go to Page 62 of your report.  
23 And I'm on Paragraph 164 where you say plaintiffs  
24 identified 30 HBC orders that they claim are

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1 suspicious. I understand from counsel for HBC that  
2 Giant Eagle determined that none of these orders were  
3 suspicious based on a thorough investigation of the  
4 associated prescriptions. My review of these orders,  
5 including the size and frequency of other orders during  
6 the relevant periods, did not identify a suspicious  
7 pattern.  
8 Do you see that?  
9 A. I do.  
10 Q. Walk me through the process that you went  
11 through here to determine that these orders were not  
12 suspicious.  
13 A. Well, all of these orders came out of the  
14 Barberton store, so we did a full analysis of the  
15 Barberton store on my direction so that I could go in  
16 and look. So although I didn't necessarily look at  
17 these 30 orders, I did a full analysis on the Barberton  
18 store to understand their ordering, frequency,  
19 quantity, and pattern.  
20 Q. And what did you look at in that regard?  
21 A. The -- I looked at the orders shipped from  
22 HBC to the Barberton store, as well as the number of  
23 controlled prescriptions filled by the Barberton store.  
24 Q. Did you run any calculations as far as

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1 percentages, controlled versus non-controlled or opioid  
2 versus non-controlled?  
3 A. We looked at -- I created the three  
4 exhibits specific to Barberton that would look at  
5 quantity -- oh, and the Barberton -- that stuff is in  
6 the other -- my other exhibit.  
7 So yes, if we you look at where we  
8 specifically call -- give me just a second. So  
9 specifically from -- on Exhibit H, if you look at the  
10 time period from November 9th to May of 2018, the  
11 Barberton store -- their controlled prescriptions  
12 versus total prescriptions were 13.9 percent.  
13 Q. And how long did it take you, by the way,  
14 to do your investigation of these 30 orders?  
15 A. Again, I --  
16 Q. How much time did you spend?  
17 A. And again, like I said, I didn't  
18 personally review all of those 30 orders. I reviewed  
19 all of the shipments. So I didn't look at those 30  
20 orders in Barberton. I reviewed all of the shipments  
21 from HBC to Barberton.  
22 Q. How long did that process take you?  
23 A. Well, it was a matter of crunching the  
24 data. I asked Giant Eagle for the data. They provided

<p>Page 202</p> <p>1 the data. I had the assistance of the Analysis Group</p> <p>2 to crunch the data.</p> <p>3 Q. That we see in Exhibit H?</p> <p>4 A. That you see in -- well, you see in</p> <p>5 Exhibit H, but then specifically to the Barberton store</p> <p>6 you see in O, P, and Q.</p> <p>7 Q. So beyond having the AGI folks crunch</p> <p>8 these numbers, is there anything else that you did to</p> <p>9 look at this store?</p> <p>10 A. To get to what conclusion? My conclusion</p> <p>11 is that there's nothing --</p> <p>12 Q. The conclusions in here?</p> <p>13 A. Yeah, my conclusion is that there was</p> <p>14 nothing suspicious as defined by the Controlled</p> <p>15 Substances Act that happened at the Barberton store.</p> <p>16 Q. Right. I'm asking what you specifically</p> <p>17 looked at to reach that conclusion. You've told me</p> <p>18 that AGI ran some numbers for you. I'm asking if</p> <p>19 anything else was done by you.</p> <p>20 A. I crunched -- we just looked at the data</p> <p>21 to determine whether or not there were orders of</p> <p>22 unusual size, frequency, or pattern.</p> <p>23 Q. Do you know how much time AGI spent</p> <p>24 creating the numbers specifically for Barberton?</p>	<p>Page 204</p> <p>1 prescriptions. I don't -- I guess I don't understand</p> <p>2 your question.</p> <p>3 Q. Right, but Giant Eagle, when they fill a</p> <p>4 prescription, they know what doctor it comes from;</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. That's all in the prescription; right?</p> <p>8 A. Yes.</p> <p>9 Q. So I'm asking you did you utilize any of</p> <p>10 Giant Eagle's data to determine how many prescriptions</p> <p>11 that fall within the data that you crunched came from</p> <p>12 doctors at either of these two facilities?</p> <p>13 A. No, I didn't -- no, I didn't.</p> <p>14 Q. Do you have any present plans to attend</p> <p>15 trial in October in this case?</p> <p>16 A. I guess that's up to counsel.</p> <p>17 Q. I'm going to ask -- I'm just asking if you</p> <p>18 personally made any plans.</p> <p>19 A. Not at this time, no.</p> <p>20 Q. Do you know when the trial is set for?</p> <p>21 A. No.</p> <p>22 MR. BOGLE: Let's take five minutes. I</p> <p>23 want to look at my notes real quick. I may be done.</p> <p>24 THE VIDEOGRAPHER: We are going off the</p>
<p>Page 203</p> <p>1 A. I don't.</p> <p>2 Q. Did you review the numbers with them to</p> <p>3 assist you in reaching your conclusions as to</p> <p>4 Barberton?</p> <p>5 A. Well, I asked for the numbers. These are</p> <p>6 the things that I wanted to see as my -- because of my</p> <p>7 analysis on this store because it was showing up in all</p> <p>8 of -- in a lot of the depositions.</p> <p>9 Q. Yeah, I'm just asking if you reviewed the</p> <p>10 numbers with them --</p> <p>11 A. Yeah.</p> <p>12 Q. -- to assist you in reaching your</p> <p>13 conclusions.</p> <p>14 A. Yes, I did.</p> <p>15 Q. You reference in Paragraph 165 that</p> <p>16 Barberton pharmacy is across the street from Akron's</p> <p>17 Children Hospital and within one mile of Summa Health</p> <p>18 System Barberton campus.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Did you specifically assess how many of</p> <p>22 the orders for the numbers that were crunched came from</p> <p>23 either of those two facilities?</p> <p>24 A. Well, HBC doesn't send orders based on</p>	<p>Page 205</p> <p>1 record at 3:10 PM.</p> <p>2 [A brief recess was taken.]</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record at 3:30 PM.</p> <p>5 MR. BOGLE: Thank you for your time. I</p> <p>6 have no further questions at this point. Okay?</p> <p>7 EXAMINATION</p> <p>8 BY MR. BARNES:</p> <p>9 Q. Good afternoon, Ms. Kinsey.</p> <p>10 You were asked a lot of questions today</p> <p>11 about various aspects of your report, various</p> <p>12 footnotes, various exhibits, et cetera, and documents</p> <p>13 and things you may have relied upon.</p> <p>14 I just want to ask you generally with</p> <p>15 respect to the -- all of the opinions that you're</p> <p>16 providing as stated in your report, what are they</p> <p>17 generally based upon.</p> <p>18 MR. BOGLE: Object to form.</p> <p>19 A. So my entire report is based off of my</p> <p>20 over 25 years of experience, 30 years of experience in</p> <p>21 pharmacy, 25 practicing as a pharmacist, my years as an</p> <p>22 executive in different companies all related to health</p> <p>23 care and pharmaceuticals, continuing education,</p> <p>24 training, conferences where I meet with colleagues,</p>

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1 conversations with manufacturers learning and teaching  
2 me about the industry, as well as specifically for  
3 Giant Eagle the things that I read in this report. All  
4 of the testimony, testimony from former DEA agents,  
5 testimony from Giant Eagle employees. So it's an  
6 abundance of information and training, experience, and  
7 materials.  
8 BY MR. BARNES:  
9 Q. You were asked a lot of questions about  
10 Exhibit B to your report, which is your chronology of  
11 your litigation support engagements going back to 2016.  
12 A. Yes.  
13 Q. Do you recall those questions?  
14 A. Yes.  
15 Q. Now, have you been approved as an expert  
16 witness in multiple cases?  
17 A. Yes, I --  
18 MR. BOGLE: Object to form.  
19 A. Yes, I have.  
20 BY MR. BARNES:  
21 Q. Have you been disapproved or excluded as  
22 an expert witness because you weren't qualified?  
23 MR. BOGLE: Object to form.  
24 A. No.

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1 BY MR. BARNES:  
2 Q. The consulting engagements that counsel  
3 discussed with you -- he was asked -- he asked  
4 questions about who you represented in that case or who  
5 you were an expert for. Do you remember those  
6 questions?  
7 A. Yes.  
8 Q. Did you -- have you been an expert  
9 testifying against pharmaceutical companies?  
10 A. Yes.  
11 Q. How many times?  
12 A. In all of these cases. I have worked for  
13 a pharmaceutical company. I shouldn't say all, but  
14 all -- there's a couple of them that I haven't. But in  
15 the majority of my case I have testified -- I have been  
16 an expert witness for a pharmaceutical company in a  
17 case that is against another pharmaceutical company.  
18 Q. I see.  
19 Exhibit C to your report is a list of  
20 materials reviewed or considered. Did you intend this  
21 to be the only documents that you rely upon to form  
22 your opinions, or is it some other -- what is this  
23 listing?  
24 A. Exhibit C is not exhaustive. Exhibit C

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1 is -- it's a list of documents that I used to form my  
2 opinions that I cited as part of my opinions, but I  
3 reviewed much more information that is on here, not to  
4 mention the information that comes from all of my  
5 training and conferences that I have attended.  
6 So that list is not an exhaustive list of  
7 everything that I depended upon to form my opinions.  
8 It's just a limited amount of documents that I used to  
9 cite and to draw some major points of my conclusions.  
10 Q. With respect to the concept of theft and  
11 diversion which is touched upon in your report at  
12 multiple points, have you had industry experience and  
13 pharmacy experience -- as a pharmacist and as an  
14 executive in the industry have you dealt with theft and  
15 diversion throughout all of that experience?  
16 MR. BOGLE: Object to form.  
17 A. Yes, I have dealt with theft and diversion  
18 since pharmacy school.  
19 BY MR. BARNES:  
20 Q. And do you feel that your education,  
21 training, and experience is sufficient for the opinions  
22 that you have advanced in this case?  
23 MR. BOGLE: Object to form.  
24 A. Absolutely.

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1 BY MR. BARNES:  
2 Q. And does that include your conclusions in  
3 this case that Giant Eagle and its warehouse HBC and  
4 GERx complied with the Controlled Substances Act,  
5 including the security requirement which requires  
6 effective controls against theft and diversion?  
7 A. That is correct.  
8 Q. You at one point in questioning by  
9 counsel -- you've testified several times about AGI's  
10 role in this case, and I just want the record to be  
11 clear. The opinions that you're advancing -- are they  
12 your opinions or are they opinions suggested by AGI in  
13 any way?  
14 MR. BOGLE: Object to form.  
15 A. I wrote the report. This is my report.  
16 They're my opinions. I wrote the report. AGI was only  
17 there to crunch the data at my direction to make sure  
18 that I could further substantiate and illustrate some  
19 of my opinions and to provide actual numbers to the  
20 opinions that I was drawing.  
21 BY MR. BARNES:  
22 Q. You at one point indicated that AGI  
23 provided the substantiation for your opinions. What  
24 did you mean by that?



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1 A. Well, they did the data-crunching for me  
2 so that I could be more specific in giving my opinion  
3 so that I had numbers that could back up the general  
4 opinions that I was drawing and concluding from my  
5 analysis of Giant Eagle's operations.  
6 Q. Did you feel -- sitting here today, do you  
7 feel like you were not given any information or  
8 documents or testimony that you needed to form your  
9 opinions?  
10 MR. BOGLE: Object to form.  
11 A. I was given plenty of information that  
12 educated me about the case that helped me derive my  
13 opinions, so I believe I was given everything that I  
14 needed, and there wasn't anything that I needed to see  
15 further.  
16 BY MR. BARNES:  
17 Q. You were asked a lot of questions about  
18 your compensation. You remember that?  
19 A. I do.  
20 Q. Do you derive some of your compensation  
21 from working actively as a pharmacist?  
22 A. I do.  
23 Q. Do you derive other compensation outside  
24 of consulting -- or legal -- from consulting

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1 engagements that are listed in your report or  
2 otherwise?  
3 A. I do.  
4 Q. There was some testimony about this ratio,  
5 I'll call it, of controlled substances versus  
6 non-controlled substances. Do you recall that  
7 testimony?  
8 A. Yes.  
9 Q. And in fact, your report contained some  
10 exhibits that you went through that analyzed HBC's --  
11 I'll call it the controlled substance ratio. What is  
12 the significance of that ratio, and is it something  
13 that you came up with?  
14 MR. BOGLE: Object to form.  
15 A. So there has been DEA testimony in this  
16 case that the DEA has come out and said that a normal  
17 or an average ratio for controlled prescriptions to  
18 non -- to total prescriptions is about an 80-20 mix, so  
19 about 20 percent would be considered average or normal.  
20 So I wanted to make sure that where Giant  
21 Eagle was in that particular ratio, where the DEA agent  
22 talks about whether or not there's a red flag, and what  
23 I found is that Giant Eagle is well below where the DEA  
24 would place any flag as far as the number of controlled

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1 prescriptions being dispensed by the organization.  
2 BY MR. BARNES:  
3 Q. And is that why you asked AGI to help you  
4 crunch data, to make that analysis?  
5 MR. BOGLE: Object to form.  
6 A. That is correct, because I wanted to see  
7 the information and in fact see it by store within some  
8 in Cuyahoga County.  
9 BY MR. BARNES:  
10 Q. And using the DEA's own 80-20 test, you  
11 said that HBC never approached the 20 percent amount  
12 that the DEA said you should look at?  
13 MR. BOGLE: Object to form.  
14 A. That is correct. Based on the exhibit --  
15 I would have to go back, but I believe it's about 9.8  
16 percent. So as an organization, where the DEA said  
17 they wouldn't even consider a red flag until it was  
18 around -- until it was over 20-ish percent, Giant Eagle  
19 is well below that.  
20 BY MR. BARNES:  
21 Q. For the time period at issue?  
22 A. For the time period at issue from November  
23 2009 to 2018 in the Summit and Cuyahoga Counties.  
24 Q. What exhibit are you looking at?

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1 A. I'm sorry. I'm looking at Exhibit H.  
2 Q. You found it faster than I did. And these  
3 are for so -- specific stores, all of the stores in  
4 Summit and Cuyahoga Counties?  
5 A. That is correct.  
6 Q. From November of 2009 to May of 2018?  
7 A. That is correct.  
8 Q. And is that time period related to when  
9 HBC and/or GERx distributed controlled substances?  
10 A. Yes.  
11 Q. And overall it's about less than half of  
12 what the DEA said would be a problematic ratio?  
13 MR. BOGLE: Object to form.  
14 A. Yes.  
15 BY MR. BARNES:  
16 Q. There were a few exhibits in your report  
17 that were not gone over, and I would like to draw your  
18 attention, for example, to Exhibit D as in dog.  
19 What -- can you tell us what that exhibit shows?  
20 A. This was a review of -- using McCann's  
21 dataset where I wanted to go back and see. We talked a  
22 lot about MMEs as well as dosage units, and this in  
23 particular looked at HBC, and what it showed is based  
24 McCann's dataset that HBC's share of the market with

<p style="text-align: right;">Page 214</p> <p>1 respect to MMEs -- and now this is the first part from  2 January 1996 to 2018 -- that HBC only had about .1 --  3 .81 percent.  4 Q. 0.81?  5 A. 0.81 percent market share.  6 Q. Why did you want to know that?  7 A. Because it's tiny. It's minuscule. So  8 when you think of the entire market that is involved in  9 Summit and Cuyahoga Counties, the amount of MMEs that  10 HBC is responsible for is minuscule.  11 Q. Is that also shown in Exhibit E? The  12 other way.  13 A. Yes. Then when you break it out, both  14 Exhibit E and Exhibit F, you can see the same thing.  15 It's broken out per capita and broken out into the  16 individual counties, so you can actually see the flow  17 of shipments -- you can actually see the market share  18 per capita in E and F, and then down in the lower  19 right-hand corner you can see the minuscule amount that  20 is actually distributed by HBC and GERx, including the  21 time frame from 2014 to 2016 where they distributed  22 zero.  23 Q. And why was that? Why did they distribute  24 zero in that time frame?</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. And are you familiar with whether or not  2 the DEA would provide such guidance?  3 MR. BOGLE: Object to form.  4 A. The DEA would talk around the subject but  5 would never necessarily put in specifics. They would  6 never endorse a specific system or a specific  7 methodology.  8 BY MR. BARNES:  9 Q. And so was industry required to just come  10 up with whatever they thought was appropriate?  11 MR. BOGLE: Object to form.  12 A. Industry was directed to design and  13 develop a system that is unique and specific to their  14 business, so something that Giant Eagle would develop  15 should look and would look completely different than  16 something that CVS would develop because they're  17 different organizations, they're a captive  18 self-distributor. They have different businesses,  19 different areas of operation.  20 And so the DEA being overly ambiguous  21 required these organizations to cater and to uniquely  22 design something specific for their business.  23 BY MR. BARNES:  24 Q. In that same testimony you were asked if</p>
<p style="text-align: right;">Page 215</p> <p>1 A. Because they closed the HBC facility and  2 then opened GERx, and so it was during that time frame  3 that you're not going to see any shipments based from  4 Giant Eagle organization.  5 Q. Thank you. You were asked some questions  6 about the DEA, and there was something in your report  7 about their overly ambiguous guidance. Do you recall  8 that testimony?  9 A. It was -- yes, I do. With regards to the  10 Controlled Substances Act and the direction that they  11 were given or lack of specifics that they were  12 providing as it relates to the suspicious order  13 monitoring system.  14 Q. As part of your testimony and your  15 report -- is it based upon your experience in that time  16 frame -- and by time frame I'm talking about roughly  17 2000 to 2009. Were you practicing in the industry or  18 practicing as a pharmacist during that period of time?  19 A. Yes, I was.  20 Q. And were you familiar with industry's  21 attempts to get guidance from the DEA?  22 MR. BOGLE: Object to form.  23 A. That is correct, yes.  24 BY MR. BARNES:</p>	<p style="text-align: right;">Page 217</p> <p>1 companies were in a better position to determine what  2 systems they were going to use. Do you recall that  3 testimony?  4 A. I do. The most important thing here --  5 because the other thing the DEA came out and said is --  6 they actually termed something called know your  7 customer. In fact, there are experts that talk about  8 knowing your customers being extremely important in  9 your suspicious order monitoring program, and the  10 unique advantage that Giant Eagle has is they know  11 their customer because their customer is their own  12 organization.  13 Their stores are following all of Giant  14 Eagle's controls. They are Giant Eagle's employees.  15 So having this captive self-distribution and this  16 closed loop of supply chain makes them unique in being  17 able to design a program that is specific to their  18 business.  19 Q. But in terms of who's in a better position  20 to design systems -- are you familiar with the ARCOS  21 database?  22 A. I am familiar with ARCOS.  23 Q. And who maintains and manages that  24 database?</p>

<p style="text-align: right;">Page 218</p> <p>1 A. Well, the DEA does.</p> <p>2 Q. And what are the inputs into that</p> <p>3 database, based upon your experience?</p> <p>4 A. Well, the DEA gets to see the -- the</p> <p>5 interesting part is Giant Eagle can see the flow of</p> <p>6 merchandise that is specific to Giant Eagle. The DEA</p> <p>7 can see the flow of merchandise nationwide that</p> <p>8 every -- so the only thing Giant Eagle can see is what</p> <p>9 is within Giant Eagle's control.</p> <p>10 The DEA can see everything. So through</p> <p>11 the ARCOS database they get to see every shipment to</p> <p>12 through wholesaler from every manufacturer. It's a</p> <p>13 huge database that the DEA can look and examine and see</p> <p>14 what is actually going on nationwide, or it can be</p> <p>15 completely narrowed down to a specific pharmacy.</p> <p>16 Q. So in terms of access to data to analyze</p> <p>17 what's going on in the country regarding controlled</p> <p>18 substances as between the DEA and manufacturers or</p> <p>19 distributors or pharmacies, who has the better</p> <p>20 information?</p> <p>21 MR. BOGLE: Object to form.</p> <p>22 A. Well, the DEA's information is more</p> <p>23 comprehensive. They have entirely more information and</p> <p>24 it is extremely more comprehensive for them to be in a</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Is that something that you made up, or is</p> <p>2 that coming from somebody with knowledge?</p> <p>3 MR. BOGLE: Object to form.</p> <p>4 A. It actually came from multiple people I</p> <p>5 believe I cited in two different places, and the number</p> <p>6 that's been thrown around or has been testified to is</p> <p>7 between 99.9 percent and 99.5 percent.</p> <p>8 I believe I pulled it out of Prevoznik's</p> <p>9 report, but it was said by multiple people, and it</p> <p>10 indicates -- and what the conclusion that is being</p> <p>11 drawn from the documents is that there's a very, very</p> <p>12 small fraction of prescribers and prescriptions that</p> <p>13 are being written for illegitimate reasons.</p> <p>14 BY MR. BARNES:</p> <p>15 Q. I'm going to show you what was marked as</p> <p>16 Rannazzisi Exhibit 8.</p> <p>17 A. Does this have to be marked?</p> <p>18 Q. I want to direct your attention to Page 76</p> <p>19 and specifically down near the bottom, the last piece</p> <p>20 of testimony of Mr. Rannazzisi, who I believe was the</p> <p>21 head of the DEA diversion division when he gave this</p> <p>22 testimony in 2014. If he it wasn't actively at the</p> <p>23 time, he had very recently been.</p> <p>24 Do you recognize him, for example, as the</p>
<p style="text-align: right;">Page 219</p> <p>1 better position to see the actual flow if they want to</p> <p>2 see what's happening nationwide.</p> <p>3 BY MR. BARNES:</p> <p>4 Q. And would that include specific product</p> <p>5 flow, or say opioid flows to specific pharmacies</p> <p>6 anywhere in the country?</p> <p>7 A. Yes.</p> <p>8 Q. And who was responsible for enforcing the</p> <p>9 Controlled Substances Act?</p> <p>10 MR. BOGLE: Object to form.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. And who has the enforcement powers of</p> <p>13 arrest and criminal investigations and civil</p> <p>14 enforcement, things of that nature?</p> <p>15 MR. BOGLE: I'll just object as it exceeds</p> <p>16 the scope of the report and my exam.</p> <p>17 A. The DEA.</p> <p>18 BY MR. BARNES:</p> <p>19 Q. There were some questioning concerning --</p> <p>20 I think the number was 99 percent of the prescriptions</p> <p>21 written in the country being legitimate, if I -- I was</p> <p>22 writing as fast as I could while you were testifying.</p> <p>23 Do you recall that testimony?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 221</p> <p>1 author of the dear registrant letters from 2007 -- 2006</p> <p>2 and 2007?</p> <p>3 A. I do yes.</p> <p>4 MR. BOGLE: Object to form.</p> <p>5 BY MR. BARNES:</p> <p>6 Q. Would you read into the record Mr.</p> <p>7 Rannazzisi's two sentences here in his Congressional</p> <p>8 testimony on April 29th of 2014?</p> <p>9 A. Mr. Rannazzisi says, quote, I think that</p> <p>10 if you were talking about 99.5 percent of the</p> <p>11 prescribers, no, they are not overprescribing, but our</p> <p>12 focus is in rogue pain clinics and rogue doctors who</p> <p>13 are overprescribing. Actually, they are prescribing</p> <p>14 illegally. They are not overprescribing. They are</p> <p>15 illegally prescribing.</p> <p>16 Q. So does that comport with your 25 years'</p> <p>17 experience in the industry and more particularly your</p> <p>18 experience as a pharmacist, that the vast majority,</p> <p>19 upwards of 99.5 percent of doctors, were legitimately</p> <p>20 prescribing opioids for legitimate patients with</p> <p>21 legitimate needs?</p> <p>22 MR. BOGLE: Object to form.</p> <p>23 A. Yes, that is correct. It is consistent</p> <p>24 with my practice as a pharmacist, as an executive, and</p>

<p style="text-align: right;">Page 222</p> <p>1 my 25 years in the industry.</p> <p>2 BY MR. BARNES:</p> <p>3 Q. There was also -- and I think you also</p> <p>4 cited to this. I want to direct your attention to the</p> <p>5 DEA witness Prevoznik, Exhibit 15. And this was used</p> <p>6 in the Prevoznik deposition on Page 32. Mr. Patterson,</p> <p>7 who was the acting administrator of the DEA, May 8th of</p> <p>8 2018, in testimony before Congress. Would you read in</p> <p>9 the last two sentences of his testimony at the top of</p> <p>10 Page 32?</p> <p>11 A. Mr. Patterson says, quote, I look at the</p> <p>12 vast majority of doctors. 99.99 percent are all trying</p> <p>13 to do right by their patients, so I think the key is to</p> <p>14 again keep working on it -- educational process.</p> <p>15 Q. Again, is that consistent with your</p> <p>16 industry experience, including as a practicing</p> <p>17 pharmacist for the last two-and-a-half decades?</p> <p>18 MR. BOGLE: Object to form.</p> <p>19 A. Yes, it is consistent with my practice and</p> <p>20 my experience.</p> <p>21 BY MR. BARNES:</p> <p>22 Q. And would you expect DEA officials who</p> <p>23 have access to the ARCOS database and who have vast law</p> <p>24 enforcement powers across the entire country would know</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. Have you seen any trends in the</p> <p>2 availability of opioids and the effects it has on</p> <p>3 patients?</p> <p>4 MR. BOGLE: Object to form. Exceeds the</p> <p>5 scope of my exam or her report.</p> <p>6 A. Yes, I have seen prescribing patterns</p> <p>7 change. I've also seen what happens when certain</p> <p>8 opioids, certain strengths are no longer available in</p> <p>9 market and how those shortages affect patient care, as</p> <p>10 well as the ordering patterns of stores.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. And how do they affect patient care?</p> <p>13 A. Well, it --</p> <p>14 MR. BOGLE: Object to form.</p> <p>15 A. It sends the patient scrambling. If -- I</p> <p>16 can tell you specific -- just as a specific example</p> <p>17 earlier this year, morphine 15 milligram was</p> <p>18 unavailable, and if that was what the patient needed,</p> <p>19 your choice was either to change the drug, or</p> <p>20 unfortunately we were forced to give the patient and</p> <p>21 the doctor had to write for a stronger amount and ask</p> <p>22 the patient to cut it in half because the product</p> <p>23 was -- the product that they needed was no longer</p> <p>24 available.</p>
<p style="text-align: right;">Page 223</p> <p>1 these statistics and not be speaking of these</p> <p>2 statistics without having an adequate basis for them?</p> <p>3 MR. BOGLE: Object to form.</p> <p>4 A. Yes.</p> <p>5 BY MR. BARNES:</p> <p>6 Q. Have you ever turned down an engagement</p> <p>7 asked of you because you couldn't provide the opinion</p> <p>8 that was being requested?</p> <p>9 A. Yes.</p> <p>10 Q. You were asked a bunch of questions about</p> <p>11 opioids being an effective pain management drug. Do</p> <p>12 you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Have you actually -- and you testified</p> <p>15 generally about the FDA and NDAs and ANDAs and -- et</p> <p>16 cetera. Have you actually seen this in practice as a</p> <p>17 pharmacist?</p> <p>18 MR. BOGLE: Object to form.</p> <p>19 BY MR. BARNES:</p> <p>20 Q. Opioids being an effective pain management</p> <p>21 tool for doctors?</p> <p>22 A. Yes.</p> <p>23 MR. BOGLE: Object to form.</p> <p>24 BY MR. BARNES:</p>	<p style="text-align: right;">Page 225</p> <p>1 So it sends the different trends, it sends</p> <p>2 the prescribing habits, and it sends the ordering</p> <p>3 process out of balance. When certain products are no</p> <p>4 longer available, then you can see some blips or</p> <p>5 disparities.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. Is there a patient care aspect to</p> <p>8 suspicious order monitoring?</p> <p>9 MR. BOGLE: Object to form.</p> <p>10 A. There is. The pharmacy organization --</p> <p>11 the pharmacy itself. Let's start there.</p> <p>12 Pharmacists are trained to take care of</p> <p>13 their patients, and you can't take care of your</p> <p>14 patients if you don't have product on the shelf. So</p> <p>15 you have an obligation as a pharmacist to carry the</p> <p>16 products that your patient base needs, and when you</p> <p>17 can't get those products from your wholesaler, it's</p> <p>18 devastating, and you can no longer take care of your</p> <p>19 patient, and therefore you have to tell your patient to</p> <p>20 go somewhere else.</p> <p>21 So it's important that whatever suspicious</p> <p>22 order monitoring threshold, program, and all of the</p> <p>23 different tools that you use -- the things that you put</p> <p>24 together need to follow the law, and you need to be</p>

<p style="text-align: right;">Page 226</p> <p>1 compliant, but you also have to remember patient care</p> <p>2 so that you don't unnecessarily slow things down or</p> <p>3 disrupt access that can cause further ramifications</p> <p>4 down the line, which includes further harm to the</p> <p>5 patient.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. So if I'm interesting you correctly, that</p> <p>8 part of this analysis about suspicious orders is -- is</p> <p>9 your testimony that you have to take into account the</p> <p>10 legitimate needs of patients?</p> <p>11 MR. BOGLE: Object to form.</p> <p>12 A. Yes. You can't just stop an order because</p> <p>13 it's flagged by a system, because by stopping that</p> <p>14 order that drug is not getting to the store and</p> <p>15 therefore the store then can't fill prescriptions.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. You know Dr. McCann -- he had like five</p> <p>18 different ways of playing with the numbers in terms of</p> <p>19 how many suspicious orders, and do you recall one of</p> <p>20 his methodologies would have identified upwards of 80</p> <p>21 to 90 percent of every order ever input by everybody as</p> <p>22 suspicious? Does that make any sense to you</p> <p>23 whatsoever?</p> <p>24 MR. BOGLE: Object to form.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. And does that cover the time period in</p> <p>2 which HBC and GERx were actually distributing</p> <p>3 controlled substances?</p> <p>4 A. Yes.</p> <p>5 Q. And that began when; do you know?</p> <p>6 A. In 2009.</p> <p>7 Q. When you talked about the suspicious order</p> <p>8 monitoring, were you limiting your testimony in any way</p> <p>9 to so-called threshold systems that use formulas or</p> <p>10 algorithms?</p> <p>11 MR. BOGLE: Object to form.</p> <p>12 A. No, as I've stated before, threshold</p> <p>13 systems are only a tool to be used as potentially --</p> <p>14 you don't even have to use it. It's not even required</p> <p>15 by law, but you can use a threshold-type system as a</p> <p>16 tool in your toolbox as it relates to a suspicious</p> <p>17 order monitoring program.</p> <p>18 BY MR. BARNES:</p> <p>19 Q. You were asked some questions about being</p> <p>20 licensed and what that means. I just want to follow up</p> <p>21 with a few questions. Were you testifying that simply</p> <p>22 having a license meant you were in compliance, or</p> <p>23 something else?</p> <p>24 MR. BOGLE: Object to form.</p>
<p style="text-align: right;">Page 227</p> <p>1 A. No, it makes absolutely no sense. His</p> <p>2 methodologies were full of flaws.</p> <p>3 BY MR. BARNES:</p> <p>4 Q. Are you aware of the DEA being required to</p> <p>5 consider patient needs and making sure there was an</p> <p>6 adequate supply getting to the patients as part of</p> <p>7 their regulatory obligations?</p> <p>8 MR. BOGLE: Object to form.</p> <p>9 A. The DEA's regular -- and where I would</p> <p>10 apply this is in their quotas, as the DEA is</p> <p>11 determining how quotas are formed and what they should</p> <p>12 be used for. The DEA's obligation is to make sure that</p> <p>13 there is enough product in market to meet the needs and</p> <p>14 the demand of the patients.</p> <p>15 BY MR. BARNES:</p> <p>16 Q. You provided a lot of testimony and your</p> <p>17 report specifically addresses HBC and the GERx</p> <p>18 warehouse at Giant Eagle?</p> <p>19 A. Yes.</p> <p>20 Q. And you've -- I don't want to go over</p> <p>21 everything, but you've opined that Giant Eagle has met</p> <p>22 the Controlled Substances Act in many different ways</p> <p>23 and in some ways exceeded the requirements of that act?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 229</p> <p>1 A. By having a license, the regulatory</p> <p>2 authority has said that you have controls, policies,</p> <p>3 and procedures in place they find legally relevant to</p> <p>4 rules and regulations that they have created and</p> <p>5 they're enforcing.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. And you talked a little bit about</p> <p>8 preinspection -- preinspections by the DEA. And by</p> <p>9 pre, I mean before you start distributing, another</p> <p>10 inspection right after you start distributing, and then</p> <p>11 periodic inspections throughout the time you are</p> <p>12 distributing -- is that -- am I summarizing your</p> <p>13 testimony correctly?</p> <p>14 MR. BOGLE: Object to form.</p> <p>15 A. Yes.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. Now are those inspections rigorous or are</p> <p>18 they flimsy or somewhere in between?</p> <p>19 MR. BOGLE: Object to form.</p> <p>20 A. No, those inspections are extremely</p> <p>21 rigorous, and they give full feedback whether or not</p> <p>22 you're meeting their expectations of what needs to</p> <p>23 occur.</p> <p>24 BY MR. BARNES:</p>



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<p>1 Q. Does it include a review of suspicious 2 order monitoring systems? 3 A. It does. 4 MR. BOGLE: Object to form. 5 BY MR. BARNES: 6 Q. Does it include a review of inventory 7 management systems? 8 A. It does. 9 Q. Does it include a detailed review of 10 transactions within your systems to make sure controls 11 are in place and working? 12 MR. BOGLE: Object to form. 13 A. Yes. 14 BY MR. BARNES: 15 Q. And did you see testimony in the record 16 for the Giant Eagle depositions that HBC and GERx were 17 subjected to pre-inspections, post-inspections, and 18 audits -- periodic audits? 19 A. Yes, I did see that testimony. 20 Q. And did you also see the testimony that 21 the DEA never once suggested that Giant Eagle was not 22 in compliance? 23 MR. BOGLE: Object to form. 24 A. The DEA did not find any deficiencies.</p>	<p>1 A. The training using computer-based 2 learning, yes, and also using field management. That's 3 pretty standard, yes. 4 Q. You were asked some questions about 5 whether you particularly focused upon opioids or 6 hydrocodone-containing products and compared them to 7 other information. Do you remember those questionings 8 or those questions? 9 A. Maybe. 10 Q. I could be a little bit -- 11 A. Which one are you going to? 12 Q. Well, I'm just trying to see if you can 13 generally recall analyses in the McCann report where he 14 compared hydrocodone shipments by HBC over time. Do 15 you recall that? 16 A. Yes, I do. 17 Q. And what do you recall he was doing with 18 that information? 19 A. Well, he was comparing it -- in some cases 20 he was comparing it to DEA quotas. In other cases he 21 was just showing the hydrocodone shipments, all of 22 which were -- again, based on my report, were -- they 23 don't track the way the quotas track and they continue 24 to show that the shipments out of HBC continue to</p>
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<p>1 BY MR. BARNES: 2 Q. And is that an important factor for you 3 when you made the evaluations you did in this case and 4 came to the conclusions that you did? 5 A. Absolutely, yes. 6 Q. You were asked some questions about 7 training -- training at Giant Eagle. Do you recall any 8 deposition testimony about so-called CBT, 9 computer-based training? 10 A. I do, yes. 11 Q. And do you recall specifically the Walt 12 Durr and Greg Carlson depositions talking about 13 training? 14 MR. BOGLE: Object to form. 15 A. Yes, they went -- they spoke of the 16 different training modalities from computer-based 17 training to even having trainers. Their PDLs often 18 gave little mini training seminars or on-the-job 19 training, so it was constant education on the policies, 20 procedures, and controls that Giant Eagle wanted them 21 to follow. 22 BY MR. BARNES: 23 Q. Is that pretty standard in the industry in 24 your experience -- that type of training?</p>	<p>1 decline. 2 Q. What did you take from that? What does 3 that mean to you? 4 A. It means that the -- those type of 5 patients, although their prescription volume was steady 6 or slightly declined from 2012 forward, you actually 7 saw a further decline in their controlled substances, 8 which tells you a lot about the patient that is coming 9 to Giant Eagle. 10 This is not the drug-seeking patient. 11 This isn't the patient that comes in and only gets a 12 prescription for hydrocodone. These are the patients 13 that are coming in for diabetes, for their blood 14 pressure, for their stomach issues, and they're not 15 over-indexing or they're not attracting the patient 16 strictly seeking hydrocodone. 17 Q. You were asked some questions about -- I 18 can't even read my own writing here. 19 Are you aware of any requirements by the 20 DEA to keep records of due diligence on flagged orders. 21 MR. BOGLE: Objection. 22 BY MR. BARNES: 23 Q. Or suspicious orders? 24 MR. BOGLE: Exceeds the scope of her</p>

<p style="text-align: right;">Page 234</p> <p>1 report and my exam.</p> <p>2 A. No, there's nothing in the Controlled</p> <p>3 Substances Act that say that any type of written or</p> <p>4 investigations -- that any type of written reports need</p> <p>5 to be kept for any type of time period.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. I just deciphered my handwriting, and I</p> <p>8 realized what it said.</p> <p>9 You were asked some questions about</p> <p>10 pharmacists refusing prescriptions. Do you recall</p> <p>11 those questions?</p> <p>12 A. Yes.</p> <p>13 Q. Now, when a pharmacist refuses to fill a</p> <p>14 prescription, is there a record of that in some way in</p> <p>15 your experience?</p> <p>16 A. No, there's not. There's really no way --</p> <p>17 if it's a new patient to the pharmacy, there is no</p> <p>18 record created unless we even fill a prescription. So</p> <p>19 there's no way to electronically create a record or</p> <p>20 document that type of interaction because no</p> <p>21 prescription has been filled.</p> <p>22 If it's a prescription of an existing</p> <p>23 client or an existing patient, those types of notes and</p> <p>24 documentation doubtfully are put in the record. More</p>	<p style="text-align: right;">Page 236</p> <p>1 day starts, when it ends, during breaks, security</p> <p>2 cameras, video surveillance, guards.</p> <p>3 Are those the types of controls, when you</p> <p>4 said all controls, that you had in mind?</p> <p>5 MR. BOGLE: Object to form.</p> <p>6 A. Yes, this is an illustrative list of some</p> <p>7 of the things that Giant Eagle that is not necessarily</p> <p>8 required by law, but Giant Eagle chooses to engage in</p> <p>9 these activities in order to protect their business and</p> <p>10 to prevent against theft and diversion.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. You reference a couple of times in your</p> <p>13 testimony the Durr deposition. Do you remember Walt</p> <p>14 Durr being deposed and being specifically asked a lot</p> <p>15 of questions about controls and policies and procedures</p> <p>16 at the HBC warehouse?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall the exhibits to that</p> <p>19 deposition included numerous policies and procedures?</p> <p>20 He also testified to oral policies and procedures. Do</p> <p>21 you recall that testimony?</p> <p>22 MR. BOGLE: Object to form.</p> <p>23 A. Yes.</p> <p>24 BY MR. BARNES:</p>
<p style="text-align: right;">Page 235</p> <p>1 often than not -- it usually depends on what happens</p> <p>2 with the prescription. If the prescriber says hold it</p> <p>3 for a couple of days and you can fill it in two days,</p> <p>4 then that's what we do. If the prescriber says throw</p> <p>5 it away then we rip it up and we throw it away.</p> <p>6 Q. Okay. You were asked some questions about</p> <p>7 what specific controls; in fact, the questioning was --</p> <p>8 you said several times all the controls and you were</p> <p>9 asked, well, give me an example, and you referred to</p> <p>10 the controlled substance manual and various controls at</p> <p>11 the store and warehouse.</p> <p>12 Would you look at Pages 43 and 44 of your</p> <p>13 report? And specifically Paragraph 125.</p> <p>14 These bullet points that are highlighted</p> <p>15 here -- what are they?</p> <p>16 A. These are physical -- they're security</p> <p>17 controls to prevent theft and diversion at Giant Eagle.</p> <p>18 Q. And they continue onto the middle of Page</p> <p>19 44 -- they include things like limited personnel access</p> <p>20 to controlled substances, Vocollect software</p> <p>21 application and hardware, Manhattan software</p> <p>22 application, order specialist, threshold reports,</p> <p>23 inventory counting at point of receipt and reserve</p> <p>24 slots for outbound product counting before the business</p>	<p style="text-align: right;">Page 237</p> <p>1 Q. Is that part of the information you relied</p> <p>2 upon in your report when talking about written policies</p> <p>3 and procedures and controls followed by Giant Eagle?</p> <p>4 MR. BOGLE: Object to form.</p> <p>5 BY MR. BARNES:</p> <p>6 Q. And specifically the HBC warehouse?</p> <p>7 MR. BOGLE: Object to form.</p> <p>8 A. Yes.</p> <p>9 BY MR. BARNES:</p> <p>10 Q. You were asked a question about a</p> <p>11 so-called fatal flaw you said is inherent in every</p> <p>12 threshold system?</p> <p>13 A. Yes.</p> <p>14 Q. And you specifically were asked if there</p> <p>15 were -- was it -- fatal flaw in HBC's system and you</p> <p>16 provided an answer that related to the -- they use an</p> <p>17 average company-wide aggregate per month?</p> <p>18 A. Yes.</p> <p>19 Q. Despite that flaw, does that change</p> <p>20 your -- or even in light of that flaw, does that change</p> <p>21 your opinion in any way, that Giant Eagle's controls</p> <p>22 met and exceeded the Controlled Substances Act</p> <p>23 requirement?</p> <p>24 MR. BOGLE: Object to form.</p>

<p style="text-align: right;">Page 238</p> <p>1 A. Well, what it led me to believe is even  2 though Giant Eagle established that tool and began  3 using that tool, because it didn't identify any  4 suspicious orders, that the current controls, policies,  5 and procedures that Giant Eagle had in place were more  6 than adequate; that they were preventing theft and  7 diversion.  8 BY MR. BARNES:  9 Q. Did you identify any fatal flaws in the  10 McCann methodology?  11 A. Several.  12 Q. What were the biggest ones?  13 MR. BOGLE: Object to form.  14 A. Well, and it depends on which one you're  15 looking at. His first methodology, he was using a  16 six-month average, and although it was store-specific,  17 the six-month average took into account -- failed to  18 take into account any growth of a particular store, so  19 inevitably what you found out is that your largest  20 stores that had any type of growth within the period  21 were always showing up and every order was then showing  22 up on his report. Other times he was using averages.  23 Again, the biggest thing I had a problem  24 with was the fact that even when he flagged an order he</p>	<p style="text-align: right;">Page 240</p> <p>1 account their specific business models.  2 BY MR. BARNES:  3 Q. And you may have testified to this  4 already, but the DEA regulations and guidance that  5 you've seen -- are you supposed to tailor it to each  6 organization?  7 A. Yes, the DEA has encouraged the design and  8 the development of systems specific to a -- specific to  9 an organization. It's the reason that they were overly  10 ambiguous about the direction that they created, is  11 because they wanted to put the onus back on the  12 organizations to tailor a suspicious order-monitoring  13 program that was unique to their business.  14 Q. You used the term captive self-distributor  15 in your report and in your testimony today?  16 A. I did, yes.  17 Q. Is that -- in terms of Giant Eagle, is  18 that a significant factor for you that they were only  19 distributing to themselves?  20 MR. BOGLE: Object to form.  21 A. Yes. So it's important -- and the DEA has  22 come out and said that knowing your customer is vitally  23 important to the prevention of theft and diversion, and  24 the fact that Giant Eagle is a captive self-distributor</p>
<p style="text-align: right;">Page 239</p> <p>1 would then flag every subsequent order, which just  2 basically blew up his entire report to where it was no  3 longer usable.  4 BY MR. BARNES:  5 Q. In your experience in the industry and  6 your experience as a pharmacist, does that have any  7 semblance of reality, that if an order is suspicious  8 that every subsequent order is also suspicious?  9 MR. BOGLE: Object to form.  10 A. No, because what we've already discussed  11 is a tool like a threshold monitoring -- like a  12 threshold report -- that type of tool cannot determine  13 whether an order is suspicious. It can't.  14 It is just a report. It's a report that  15 has flaws in it. It can -- red flag. It can create  16 triggers for somebody to go look. But a report cannot  17 determine whether or not an order is suspicious.  18 BY MR. BARNES:  19 Q. Did any of the McCann methodologies  20 attempt to tailor any of the methods to a specific  21 organization or defendant?  22 MR. BOGLE: Object to form.  23 A. No, he used all five methodologies across  24 a number of different defendants, not taking into</p>	<p style="text-align: right;">Page 241</p> <p>1 means it's a completely tight and controlled  2 distribution loop because they know their customer.  3 Their customer is their own pharmacy.  4 Giant Eagle is a relatively small  5 organization with 227 pharmacies. Therefore they  6 should design a program that is unique to them and  7 unique to their circumstances and take into account the  8 fact that they are their own self-distributor and they  9 own the merchandise from the time in which the  10 manufacturer delivers it to the time in which they  11 dispense it to the patient.  12 BY MR. BARNES:  13 Q. You were asked some questions about HBC's  14 investigations of flagged orders. Do you recall that?  15 A. Yes.  16 Q. Do you recall in the deposition  17 testimony the Giant Eagle witnesses being questioned  18 about specific investigations that were conducted?  19 MR. BOGLE: Object to form.  20 A. Yes, I remember the testimony that there  21 were orders that were flagged as part of their  22 threshold systems and that these conversations and  23 these investigations took place.  24 BY MR. BARNES:</p>

<p style="text-align: right;">Page 242</p> <p>1 Q. You were asked some questions about the                  2 Barberton store being close to the Akron hospital and                  3 other facilities. This was in connection with                  4 Paragraph 165 of your report.                  5 At the end of Paragraph 165, you state                  6 that the Barberton pharmacy is across -- is across the                  7 street from the Akron Children's Hospital and within                  8 one mile of the Summa Health System Barberton campus.                  9 Is that last entity -- is that a hospital?                  10 A. Yes.                  11 Q. And what is the significance of a pharmacy                  12 being very close to two hospitals?                  13 MR. BOGLE: Object to form.                  14 A. Well, it goes to the size of the pharmacy.                  15 Again, I chose to highlight, I chose to dig in deep on                  16 the Barberton store because plaintiffs often pointed                  17 out in their discovery that the Barberton store was one                  18 that Giant Eagle needed to pay attention to.                  19 So I wanted to do a deep dive into                  20 Barberton, and what you come to find out -- Barberton                  21 is one of their -- is one of Giant Eagle's busiest                  22 stores and part of the reason why it's one of the                  23 busiest stores is because it is located very close to                  24 large hospital systems.</p>	<p style="text-align: right;">Page 244</p> <p>1 pharmacies right across the street from hospitals or                  2 down the block from another hospital will see these                  3 types of prescriptions on a more frequent basis?                  4 MR. BOGLE: Object to form.                  5 A. Absolutely, which is why the DEA comes                  6 through and says that you need to know your customer.                  7 MR. BARNES: I've got nothing further.                  8 EXAMINATION                  9 BY MR. BOGLE:                  10 Q. Yeah, so a few follow-up questions.                  11 Exhibit C to your report, your materials                  12 considered, I think you said was not exhaustive. Is                  13 that right?                  14 A. Correct.                  15 Q. What are you missing? Because we're                  16 entitled to know what you're relying on.                  17 A. Well, again, a lot of the materials that I                  18 looked at and considered were just Google searches                  19 where I would pop into a document, I would read a                  20 little bit, and I would pop out. I have materials                  21 from -- and remembrance of materials from conferences                  22 and different training and continuing education.                  23 Q. And you're relying on those materials to                  24 form your opinions?</p>
<p style="text-align: right;">Page 243</p> <p>1 It will also -- and it would signify to me                  2 that not only would their prescription volume be                  3 higher, but potentially they would have a higher                  4 percentage of controlled substances because patients                  5 are fulfilling their discharge meds at these local                  6 stores.                  7 And so being around a hospital, you would                  8 essentially see a higher percentage of controlled                  9 substances in order to take care of these patients                  10 right after they have had some sort of surgical                  11 procedure.                  12 BY MR. BARNES:                  13 Q. Did the McCann analysis in any of his                  14 methodologies attempt to take into account                  15 store-specific facts like this, like where the store                  16 was located and whether or not it was next to one or                  17 two hospitals or pain clinics or things of that nature?                  18 MR. BOGLE: Object to form.                  19 A. No, the McCann report didn't take into                  20 account any specifics about any store, which like I                  21 said is a flaw with most threshold systems.                  22 BY MR. BARNES:                  23 Q. In your experience as a pharmacist and in                  24 the industry, have you seen that effect, that</p>	<p style="text-align: right;">Page 245</p> <p>1 A. It's part of my experience, so as part of                  2 my experience and my expertise, to the extent that I                  3 understand those documents and I've been exposed to                  4 them, they would help in forming my opinions.                  5 Q. So Exhibit C asks for a list of materials                  6 reviewed or considered -- materials. I'm asking do you                  7 have any other materials. I'm not asking about your                  8 experience; I'm asking about materials. Do you have                  9 any other materials that you intend to rely upon or                  10 have considered that you have not listed here? I'm                  11 allowed to know that.                  12 A. So by materials do you mean pieces of                  13 paper? I mean, I've described to you what I consider                  14 to be the information that I relied upon in forming my                  15 opinions.                  16 Q. So the federal rules require you to list                  17 out this information. I'm asking to know what it is.                  18 And I'm not asking about your experience. I'm asking                  19 about yes, documentary information.                  20 A. I understand, but what -- and my answer to                  21 you is that my opinions are based off my knowledge of                  22 the industry and my experience and that when I formed                  23 these opinion it is based on all of those materials,                  24 all of that information that I understand and that I</p>

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1 have been exposed to.

2 Q. So do you intend to provide additional

3 materials considered after this deposition?

4 MR. BARNES: I'm going to object. She's

5 not required to produce every document she's ever seen

6 as a professional since pharmacy school.

7 MR. BOGLE: That's not what I -- that's

8 not the question I'm asking her and you know that.

9 MR. BARNES: No, and what I --

10 MR. BOGLE: That's silly. That's not what

11 I'm asking her.

12 MR. BARNES: Why don't you ask her -- why

13 don't you get to the point?

14 MR. BOGLE: I already have five times.

15 She didn't answer my question.

16 MR. BARNES: No, you're asking in a way

17 that's confusing her. Why don't you ask her -- I'm not

18 even going to suggest a question.

19 MR. BOGLE: Yeah, seriously. I've asked

20 her a very straightforward question.

21 BY MR. BOGLE:

22 Q. Are there any additional materials that

23 you have reviewed for this case or have considered that

24 are not included in Exhibit C? It's a very

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1 straightforward question?

2 A. It's not, because you asked me about

3 materials and there are several things that -- there

4 are several things that I've looked at that's been part

5 of my experience and my years in the industry.

6 Q. So you're not willing to provide us a

7 complete list of the materials you've considered? Is

8 that what I should take away from this?

9 A. I don't know how to.

10 MR. BARNES: You mean for purposes of --

11 MR. BOGLE: Okay. She doesn't know how

12 to. All right. No, I'm moving on. She doesn't know

13 how to. She's answered the question.

14 MR. BARNES: No. I'll ask --

15 A. Okay.

16 BY MR. BOGLE:

17 Q. Can diversion occur when controlled

18 substances purchases are less than 20 percent of

19 overall purchases?

20 MR. BARNES: Objection. Calls for

21 speculation.

22 A. Yeah, I'm not going to speculate.

23 BY MR. BOGLE:

24 Q. You don't know?

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1 A. No, I'm not going to speculate.

2 Q. I'm not asking you to speculate. I'm

3 asking you do you know if diversion can occur when

4 controlled substances are less than 20 percent of

5 overall purchases? Do you know or do you not know?

6 MR. BARNES: Same objection.

7 A. And I will draw a conclusion that says

8 that when you've got 99.9 of prescription for

9 legitimate use and none of those prescriptions --

10 there's been no evidence that shows that those

11 prescriptions lead to diversion.

12 MR. BOGLE: Move to strike as

13 nonresponsive.

14 BY MR. BOGLE:

15 Q. That's not even close to my question. I'm

16 asking you whether diversion can occur if controlled

17 substances purchases are less than 20 percent of the

18 overall purchases.

19 MR. BARNES: Object to form. It's vague.

20 Diversion where? In the closed system or outside the

21 closed system?

22 BY MR. BOGLE:

23 Q. You can answer my question.

24 A. Well, and I'm trying to -- I'm not -- I'm

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1 trying to answer your question.

2 Q. You just answered a bunch of questions

3 from your counsel on this in a very straightforward

4 manner. I'm asking you one follow-up question and you

5 can't answer it. Is that right?

6 A. No, that's incorrect. I'm not -- I'm

7 trying to answer your question as best as I understand

8 it.

9 Q. I'll ask it again.

10 Is it possible for diversion to occur --

11 I'll even add with opioids -- if controlled substances

12 purchases are less than 20 percent of overall

13 purchases?

14 MR. BARNES: Object to form.

15 BY MR. BOGLE:

16 Q. Is that possible?

17 A. Diversion can occur at any time, yes.

18 Q. Now, the Rannazzisi testimony that you

19 were shown here today -- did you review any other parts

20 of his deposition, or did you just review this Exhibit

21 8?

22 A. No, I was -- I'm trying to remember. I

23 think the Exhibit 8 -- I may have seen other --

24 MR. KOBRIN: You can check your documents



<p style="text-align: right;">Page 250</p> <p>1 if you want.</p> <p>2 A. Oh, that's right.</p> <p>3 Yeah, it would have been -- so that</p> <p>4 particular one, it was strictly that exhibit.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. So this testimony from Exhibit 8 to his</p> <p>7 deposition -- your counsel spent a fair amount of time</p> <p>8 going over this with you. Were you shown any</p> <p>9 underlying data supporting this 99.5 percent number by</p> <p>10 your counsel?</p> <p>11 A. I didn't ask for any data. The fact that</p> <p>12 you had the head of the DEA giving this information and</p> <p>13 testifying in front of Congress leads me to believe --</p> <p>14 or you would assume that the information was</p> <p>15 trustworthy and backed up by data.</p> <p>16 MR. BOGLE: Move to strike as</p> <p>17 nonresponsive.</p> <p>18 BY MR. BOGLE:</p> <p>19 Q. Were you shown any data by your counsel?</p> <p>20 A. No.</p> <p>21 Q. Yes or no? And did you read this</p> <p>22 testimony in your preparation of your report to be a</p> <p>23 mathematical fact that 99.5 percent of prescribers are</p> <p>24 not overprescribing? Did you read that and take away</p>	<p style="text-align: right;">Page 252</p> <p>1 being discussed here with Mr. Patterson?</p> <p>2 A. I did look at some of the beginning and</p> <p>3 the end, yes.</p> <p>4 Q. Did you review all this testimony?</p> <p>5 A. I did not.</p> <p>6 Q. You said that you previously turned down</p> <p>7 engagements to be an expert. Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. How many times?</p> <p>10 A. Handful.</p> <p>11 Q. Do you have any better information than</p> <p>12 that?</p> <p>13 A. Less than maybe five. I mean, I talked to</p> <p>14 attorneys -- I mean, you're asking. It's a crazy</p> <p>15 question. They call, they say do you know anything</p> <p>16 about this we say yes, you get a little more</p> <p>17 information, you say yeah, I'm not ready to go there</p> <p>18 yet.</p> <p>19 Q. You say it's a crazy question. It's a</p> <p>20 question you were just asked by your counsel.</p> <p>21 A. Right. And my answer -- he asked if I've</p> <p>22 ever turned any down and I said yes and you want to</p> <p>23 know how many.</p> <p>24 Q. Right.</p>
<p style="text-align: right;">Page 251</p> <p>1 that that's a mathematical fact?</p> <p>2 MR. BARNES: Object to form.</p> <p>3 A. I read it that it was a relied-upon fact,</p> <p>4 yes.</p> <p>5 BY MR. BOGLE:</p> <p>6 Q. A mathematically-confirmed fact?</p> <p>7 A. If he said it. He testified to it. So</p> <p>8 yes, he should have backup to say that that is -- if</p> <p>9 he's going to give those kinds of numbers, then he</p> <p>10 should have backup, and he would be in the best</p> <p>11 position to know.</p> <p>12 Q. Not you; right?</p> <p>13 A. Not me. That is correct.</p> <p>14 Q. And the 99.9 percent number from Mr.</p> <p>15 Patterson -- same thing. Were you shown any underlying</p> <p>16 data even when your counsel went through this to</p> <p>17 support that?</p> <p>18 A. No.</p> <p>19 Q. And are you relying on that testimony to</p> <p>20 be a mathematically-proven fact?</p> <p>21 A. I'm relying on that testimony to be true</p> <p>22 based on the people that are revealing the information.</p> <p>23 Q. Did you review the remainder of the</p> <p>24 testimony to get the surrounding context for what was</p>	<p style="text-align: right;">Page 253</p> <p>1 A. And my question -- my response to you is</p> <p>2 it's hard for me to quantify because sometimes it's</p> <p>3 just a question. They will call, they say can you help</p> <p>4 us do X, Y, and Z, and I evaluate the position that</p> <p>5 they want to take and I decide yes or no, I want to be</p> <p>6 involved.</p> <p>7 Q. Has a company ever given you their</p> <p>8 internal data and documents and then you ultimately</p> <p>9 conclude that you can't help them?</p> <p>10 A. No, I've never got even that close.</p> <p>11 Q. Right. So you're talking about turning</p> <p>12 down an engagement sort of with the first phone call</p> <p>13 and they say can you help us with X, Y, and Z and you</p> <p>14 say no; right?</p> <p>15 A. There have been some that have been after</p> <p>16 panel interviews and -- where we're getting deeper into</p> <p>17 the substance of the case.</p> <p>18 Q. During those panel interviews, were you</p> <p>19 ever shown any deposition testimony or internal</p> <p>20 documents?</p> <p>21 A. No.</p> <p>22 Q. You talked about DEA inspections. Have</p> <p>23 you ever participated in a DEA inspection?</p> <p>24 A. No.</p>

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1 Q. Ever been present for a DEA inspection?

2 A. No.

3 Q. And as to the Barberton pharmacy, you

4 talked about that quite a bit. Did you analyze what

5 percentage of prescriptions came from the two medical

6 facilities you listed there in your report?

7 A. No, that information is hard to get to.

8 Q. Did you try to get it?

9 A. We -- I think we discussed it at one

10 point, but it's too hard to get to.

11 Q. Did you determine it was too hard to get

12 to?

13 A. No, it just -- it was based on my

14 knowledge of the industry and how the reporting of

15 these -- of prescription information is we determined

16 that we didn't -- we weren't going to need that

17 information and it wasn't necessarily going to bolster

18 my opinion anyway.

19 Q. But your opinion is that being close in

20 proximity to these facilities matters; right?

21 A. That's correct.

22 Q. It only matters if there's actually a

23 significant number of prescriptions coming from the

24 facilities; right?

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1 A. Yeah, but based on my experience and my

2 work both as a pharmacist and as an executive, I can

3 make the conclusion because that is normal trends that

4 would also occur at this particular location.

5 Q. But you're assuming that to be true in

6 this case as to Barberton; right?

7 A. I am making that assumption, yes.

8 MR. BOGLE: Okay. I don't have anything

9 further.

10 EXAMINATION

11 BY MR. BARNES:

12 Q. Just one follow-up. This Exhibit C.

13 Have you listed in this Exhibit C all of

14 the documents that are specific to this engagement that

15 you are relying upon to form your opinions?

16 THE WITNESS: Yes.

17 MR. BARNES: Nothing further.

18 THE VIDEOGRAPHER: Okay. We are going off

19 the record at 4:29 PM.

20

21 [SIGNATURE RESERVED.]

22

23

24

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1 CERTIFICATE

2

3 I, JOHN ARNDT, a Certified Shorthand

4 Reporter and Certified Court Reporter, do hereby

5 certify that prior to the commencement of the

6 examination, SANDRA KINSEY was sworn by me to testify

7 the truth, the whole truth and nothing but the truth.

8 I DO FURTHER CERTIFY that the foregoing is a

9 true and accurate transcript of the proceedings as

10 taken stenographically by and before me at the time,

11 place and on the date hereinbefore set forth.

12 I DO FURTHER CERTIFY that I am neither a

13 relative nor employee nor attorney nor counsel of any

14 of the parties to this action, and that I am neither a

15 relative nor employee of such attorney or counsel, and

16 that I am not financially interested in this action.

17

18

19 \_\_\_\_\_

20 JOHN ARNDT, CSR, CCR, RDR, CRR

21 CSR No. 084-004605

22 CCR No. 1186

23

24

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1

2 I, SANDRA KINSEY, the witness herein,

3 having read the foregoing testimony of the pages of

4 this deposition, do hereby certify it to be a true and

5 correct transcript, subject to the corrections, if any,

6 shown on the attached page.

7

8

9

10 \_\_\_\_\_

11 SANDRA KINSEY

12

13

14 Sworn and subscribed to before me,

15 This \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

16

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18 \_\_\_\_\_

19 Notary Public

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1 DEPOSITION ERRATA SHEET  
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23 SANDRA KINSEY  
24